

Z-16-44

# Institutions

or principall <sup>Syn. 8. 54. 50</sup> groundes  
of the lawes and statutes of  
England, newly and very trulyc  
corrected and amended, with

many new and goodly addicions, be-  
ry profitable for all sortes of  
people to know, lately  
augmented and  
imprinted.

(.)

and bred

16.<sup>o</sup> Eliz:  
Anno. 1574.





# The prologe of the authoure to the reader.



**C**mosthenes & renowned  
Orator defineth Lawe in  
this wyse. The lawe (say-  
eth he) is the thyng that  
all men ought to obey for  
many skylles, but in espe-  
cial bycause lawe is the in-  
vention & also the gyft of  
God, the degre of prudent mē, the chastise-  
ment of wylful & unwylful offences, & fynal-  
ly the common surety of a realme wherby it  
becommeth all men to lyue whych be couer-  
saunt in the same. Chrysippus also an excel-  
lent philosopher thus begynneth hys booke  
of lawes. The lawe is kyng of all aswell  
diuine as humane affayres, the president &  
comptroller of thynges honest & dishonest,  
the prince, captayne and ruler of the iuste &  
iniuste, and it is of ciuile creatures aswell  
the commaunder, what they oughte to do,  
as the forbydder, what they oughte not to  
do. These alytike sayenges of wyse men, as-  
suredlye ought muche to inflame vs to the  
knowledge of those thynges without which  
we shall be esteemed no mē but as brute and  
sauage beastes. Let vs not commytte, that  
A.ij. it be

## The pꝛeface.

It be sayd of vs Englysh mē, as it was ones  
sayd of the mē of Athens, that is, that we  
make very goodly & profytable lawes, but  
we vse them not. Certaynly there can be no  
greater reproche to a common weale then  
thys. One le Ton I wolde we learned of the  
auncient lawyer Romaine named Celsus,  
and that is thys. The knowledge of lawes  
is not to beate away the wordes but þ̄ pyth  
& powꝛ of them. Thys he wrote because  
there be many whych when good & holsom  
lawes be made, seke not to se them executed  
& obserued, but rather how to defraude thē  
and to haue them vnercuted, whych kinde  
of people after the sentence of most aũcient  
lawmakers be no lesse worthy of reprehen-  
sion thē they whych do expꝛessely agaynst þ̄  
law. Now, they do (say they) agaynst þ̄ law  
whych do the thyng þ̄ the law forbyddeth.  
And they defraude a law or statute, whych  
the wordes of the lawe saued, do circũuent  
the meanyng & sentence of it. Let vs then so  
read þ̄ lawes, þ̄ we may beate away þ̄ stẽce  
& mynd of thē, & so fulfyll & obserue þ̄ lawes  
that it may appere þ̄ they were not made in  
vayne. Thus doying, we shal please god, we  
shal be obediẽt subiectes to our prince, & spẽ-  
cially we shal seke our own weale & sauētie

The





The lawe is the direction & administration of Justice.

And iustice is (as Thempe-  
roure Justinian saith in  
hys institutions) a constant  
and permanent wyl to ren-  
der vnto every personc hys

ryght and ductye.

The learnynge or prudence of lawe, is  
a knowlege of diuine and humane thynges  
a science and perfyte notice of equitie & ini-  
quitie, of ryght and wronge.

Now for as much as a great porcion of  
the prudence or science of the lawes of thys  
realme of Englande cōsysteth in the perfyte  
knowlege of estates whych mē haue in lan-  
des and tenementes: we shall fyrst as cōpen-  
diouse, and as simply and playnly as we  
can, treat somwhat of estates.

### A diuision of estates.



We shall therfore vnderstande, that  
who so euer hath any state in lan-  
des or tenementes, eyther he hath  
in the same only a chatell, or a free  
holde, or an enheritaunce. Yf he hath an  
estate but for terme of certayne yeares, or

¶.iiij. at

## Tenaunt for yeares.

at hys landlo:des wyll: so it is called a cha-  
tell yf for terme of hys lyfe or of an other  
mans lyfe, it is called a fre holde. And yf  
he hath it to hym and to hys heires in fee  
simple, or intayle: then he hath a state of in-  
heritance.

## Tenaunt for terme of yeares.



Tenaunt for terme of yeares,  
is he to whome landes or te-  
nementes be let for terme of  
certayne yeares, as is agreed  
betwene the landlorde & the  
tenaunt. And when the per-  
son to whome suche lease is made doth en-  
tre by force of the sayd leas, and is in posses-  
sion of the same: then he is called tenant for  
terme of yeares.

And here ye shall note, that yf þe lessour  
that made þe leas hath reserved vnto hym a  
yearely rent vpon the sayd leas (as it is ac-  
customably vsed to be done) yf þe rent be be-  
hynde vnpayde, it shalbe in hys cleccion ey-  
ther to entre and distrayne for the rente, or  
to brynge an action of dette agaynst hym at  
the lawe for the arerages of the same. But  
in



## Tenaunt for yeares. fol. 11

In this case it is requisite, that the lessour  
were seased of the landes or tenementes at  
the tyme of the makynge of the lease, for o-  
therwyse it shalbe a good plee in the action  
of dette for the tenaunt to saye, that the les-  
sour had nothyng in the lande & tenement  
at the tyme of the lease made: except if lease  
were made by dede indented, for then if plee  
shall not lye in the tenauntes mouth to plede.

And it is to be knowen, that in a lease  
for terme of yeres, whether it be by dede or  
withouth dede, there neede no liverye of sea-  
son to be made to the lessee, but he maye en-  
tre whē he wyl by vertue of his lease, with-  
out any further ceremonye of liverye.

Also if a man leaseth landes for terme of  
yeres, though the lessour chaunceth to dye  
before the lessee doth entre, yet he maye entre  
wel ynough. Otherwyse it is where liverye  
of season is to be made, as in free holdes &  
inheritances.

Also if the tenaunt for yeares doth waste  
the landlorde maye brynge an actiō of waste  
against him, and shal recouer the place wa-  
sted, and his treble damages.

## Tenaunt at wyl.

Tenaunt

## 107 Tenaunt at wyll.

**T**enaunt at wyll, is he to whiche  
des or tenementes be letted to haue  
and holde the same at the wyll of þe  
lessour. And in this case the lessour  
mave put oute hys tenaunt at what tyme  
hym lyketh. But yet neuerthelesse, yf the te  
naunt haue sowed the groundes wyth corne  
in this case yf the lessour wyll entre and put  
out hys tenaunt before harvest, the law wyll  
gyue hym free comynge and goynge to reape  
and carye hys corne awaye without any pu  
nyshment or damage to be susteyned for  
his so doyng bycause he knew not at what  
tyme the lessoure wolde entre. But other  
wyse it is of the tenaunte for certayne yea  
res, for yf he soweth the grounde, and the  
terme of hys lease be come oute and expyre  
ted before the corne be ripe, in this case  
the lessoure or he in the reversion mave en  
tre and take the corne, bycause it was the  
folpe of the tenaunte to sow the grounde,  
knowynge the ende of hys terme.  
In lyke wyse tenaunte at wyll shall haue  
free comynge and goynge after the tyme  
of the lessoures entree, to carye awaye hys  
housholde stuffe and goodes for a reasona  
ble space.



## Tenaunt at wyll. 100

In this shall also vnderstande, that he that maketh a lease at wyll, may reserue an annuell or yearly rente, in which case yf the rente be behynde, he maye entre very wel & dysstrayne the goodes and cattles of the tenaunte, or at hys election he maye brynge an action of dette agaynst hym.

Also it is to be knowen, that tenaunte at wyll of a mese or tenement is not bounde by the order of lawe to sustayne and repayre the houses that be decayed and ruinouse, as is the tenaunte for yeres/and therefore none action of wast lyeth agaynst hym. Yet yf he do wyllful waste: as yf he plucketh downe the houses, or cutteth downe the trees: it hath ben thought by the sages of the lawe, that the lessoure maye brynge an action of trespasse agaynst hym and shall recover his Tolles therby susceyued.

## Tenaunte by coppe of courte rolle

**T**here is an other kynde of tenaunte at wyll, whych is called tenaunt by copp of the court rolles. And this is when a man is leased of a maner within whych it hath

## Tenaunte by coppe.

It hath bene vſed tyme out of mynde, that the tenauntes wythin the boundes and precincte of the ſayd maner, haue holden lādes and tenementes to them and to theyr heyres in fee ſimple, fee taylor, or for terme of lyfe, at the wyll of the lord, accordynge to the cuſtome of the maner. And ſuche atenaunte can not aliene or ſell hys lande by his dede, for yf he do, the lande or tenement that is ſo aliened and ſolde, is forſayted into þ lordes handes, but yf he woll alien hys coppe holde lande to an other, he muſt accordynge to the cuſtome, come into the lordes court, and there ſurrender it unto the lordes hāde to the behouſe & vſe of hym that ſhall haue the ſtate. The forme of whych ſurrender is commonly vſed to be thys.

Ad hanc curiam venit A. de A. et ſuſum reddidit in eadē curia vñſ meſuagium. &c. in manus domini ad vſum C. de D. et heretudum ſuorum vel heretudum de corpore. &c. Et ſuper hoc venit predictus C. de D. et cepit de domino in eadem curia meſuagium predictum, habendum et tenendum ſibi. &c. ad voluntatem domini ſecundum conſuetudinem manerij, faciendū et reddendū inde redditus, ſeruitia, et conſuetudines inde prius debitas & coſuetas. &c. Et dat dñs pro fine. &c.



**Et fecit domino fidelitatem.**

These as I sayd be called ternautes by cove of court rolle, bycause they have none other evydence to shewe concernynge theyr landes, save onely the cove of the rolles of theyr lordes court.

Neither can these ternautes sue or be sued for suche landes, in the kynges court by wryte or other wyse, but yf they wyl in any wyse implede or sue others for such cove landes, they must do it by way of playnt in the lordes court after thys sorte.

A. de B. queritur versus C. de D. de placito terre, videlicet de vno mesuagio, xl. acris terre. iiii. acris prati, &c. cum pertinent. Et facit protestationem sequi querelam istam in natura brevis domini regis assise mortis antecessoris ad eandem legem vel. &c. plegii de psequendo ff. B. &c.

Nowe although some suche ternautes have an inheritaunce accordynge to the custome of the maner, yet in very dede they are but ternautes at the wyl of the lord. For, as some men thynke, yf the lord wyl expell them ad put them forth, they have no remedy at all, but to sue unto theyr lord by waye of petition, desyringe hym to be good and gracious lord unto them. For yf they  
myght

## Tenaunt by cōpye.

myght haue any remedye by the lawe then  
shulde they not be called (saye they) tenaun-  
tes at the wyl of the lorde after the custome  
of the maner. But other men of no lesse let-  
tyng and prudence haue bene of contrarye  
sentence: as lorde Bryan chiefe iustice, in  
the tyme of kynge Edwarde the .iiii. whose  
opinion was alwayes, that yf suche tenaunt  
by the custome (payeng hys seruices) be eie-  
cted and put forth by hys lorde wythoute  
cause reasonable, he maye very wel brynge  
and mayntaine an actiō of trespasse against  
hys lorde at the cōmon lawe: as appeareth  
termino Hyllarii anno. cxi. E. iiii. Also lord  
Danby chiefe iustice in likewise, was of the  
same iudgement: as appeareth termino Mi-  
chaelis. an. vii. Edwardi. iiii. where he say-  
eth that the tenaunte by the custome is as  
well inheritable to haue hys lādc after the  
custome, as is he that hath a free holde at  
the common lawe, but the determination  
of thys question I remyt to my great may-  
sters, whych can solue the knottes and eni-  
gmates of the lawe.

For as much as yet styl of this matter, Cau-  
sidiu certant et adhuc sub iudice lis est.

Also ye shall vnderstande, that the v-  
sage of some Maour is, when the tenaunt  
wyl



## Of court rolle. fol. vii.

Wyll surrender hys lande to the vse of an other, that he shall take a wand or rodde in hys hande, and deliuer it to the steward of the court, and the steward shall deliuer the same wand in name of seisin to hym that shall take the lande: and suche a tenaunte is called, tenaunt by the verge. By these other customes there be of surrendryng of cople holde landes, whiche here for tediousnesse I wyll omitte. And forasmuche as tenauntes by custome of the Manoure, haue by the course of the common lawe no free hold therfore they be called tenauntes of base tenure.

Byther to haue we treated of the first membre of our diuision, that is to wyte, of chattelles, for as I sayd, all leases for terme of yeares, and at wyll be accompted in the lawe but as cattelles and be comprised vnder that name, save that they be called cattelles reals, where as kyne, oxen, horses, money, hlate, come, and suche lyke be called chattell personalles. Nowe we wyll procede to the explanacion of the seconde membre, that is to saye, of free holdes.

### A diuision of free holdes.

Free

## A Division of free holdes.

**F**ree holdes or franke tenementes a man maye haue in sondry wyse, for ether he is seased for terme of hys owne lyfe, or for terme of an other mans lyfe. Yf he be seased for terme of hys owne lyfe, ether he hath gotten suche estate by waye of purchase, or els the lawe hath entypled him therunto. I call it by purchase, whether he cometh vnto it by his owne barganyng & procurement, or by the gyfte of hys frende, and I call it by the operation and entyplinge of the lawe, when a man marryeth a woman that is an inherytress, and hath issue by her, and she dyeth, now he shal haue the lades durynge hys lyfe by the course of the lawe, and shalbe called tenaunt by the curtesye of englande.

In lyketwyse, yf a man be seased in fee simple or fee tayle of landes, and taketh a wyfe, and he dyeth, the lawe gyueth vnto the wyfe the thyrde parte of her husbandes landes for terme of her lyfe, and she shalbe called tenaunt in dower.

**T**enaunt for terme  
of lyfe.

**Tenaunt**



## Tenaunt for terme of life. fo. viii

**T**enaunte for terme of lyfe/ is he that holdeth landes or tenementes for terme of hys owne lyfe, or for terme of an others lyfe. Howe be it the moost frequent and common maner of speakynge is to call hym that hath estate for terme of hys owne lyfe, tenaunt for lyfe, & hym that hath estate for terme of an others lyfe, tenaunt pour terme d'autre vie, that is to saye tenaunt for terme of an others lyfe.

Ye shall note, that lyke as he that maketh the lease is called the le-Toure, and he to whome the lease is made is called the lessee, so he that maketh a feffement is called the feffoure/ and he to whome the feffement is made the feffee.

Also yf tenaunt for terme of lyfe, or tenaunte for terme of an other mans lyfe do wast, the lessour or he in the reuerfion shall mayntayne verpe well an action of wast agaynst hym, and shall by the same recouer treble damages.

Finally, ye shall vnderstande that by an acte of parliament made in the. xxvii. yeaere of our Souerayne lord that now is, kyng Henry the eyght, it is enacted that no free holde, nor estate of inheritaunce shall passe nor take effecte by reason of any bargayne & sale, excepte the same be made by wyrtynge indented

## Tenaūt for terme of lyfe.

indented, sealed and enrolled in one of the  
Kynges Maiesties courttes at Westminster  
or elles wythin the same countie where the  
lande both lye, before the custos Rotulor, &  
two Iustices of peace and the clerke of the  
peace of the same countie, or two of them at  
the lest, of whych, the sayd clerk shalbe one,  
and that suche enrollement be made wyth-  
in fyve monethes after the date of such wy-  
tynge. And for the enrollement of every such  
wytynge, where the lande copyied therein  
is not above the yeatlye value of. xl. s. they  
shal take two shyllynges, that is, twelue  
pence to the Iustices, and twelue pence to  
the clerk. And yf the lande be above the ye-  
lye value of. xl. s. then they shal take. v. s.  
that is. ij. s. vi. d. to the Iustices, & ij. s. vi. d.  
to the clerk, which shal incolle and ingrosse  
sufficiently in parchement suche dedes and  
wytynges, and at every yeres ende he shal  
delyver the same to the Custos Rotulor of  
the same countie, to remayne in his custody  
amonge other recordes of the same countie  
so that the parties resortynge thither may  
se them. Provided, that thys extende not to  
any tenementes or hereditamentes lyenge  
wythin any cytie or towne corporate wher-  
in the Mayours, Recorders, or other offi-  
cers



## Tenaunt by the curtesie. fo. ix.

ters haue authoritie, or haue lawfully vsed  
to incole any euidences or wytynges with  
in theyr preclincte.

## Tenaunt by the curtesie.

**T**enaunt by the curtesye of Englande,  
is he that hath maried a wyfe inhe-  
rited, and hath had issue by her, and  
she is deade, in thys case the lawe of Eng-  
lande permitteth and suffereth the husbade  
of such wyfe to receyue and kepe syl al his  
wyses lades that she had epyther in fee sim-  
ple, or fee tayle so longe as he lyueth. And  
thys is by the curtesye & vrbanitie of Eng-  
lande, for this thyng is vsed in noue other  
countrey nor region.

But in thys case it is requyred that the  
chylde be byfall, that is to saye, be borne &  
brought forth into this worlde alpye, and  
thetfor the common sayeng is & hath ben,  
that onles the chylde be herde crye, the fa-  
ther shall not be tenaunt by the curtesye, for  
the onely proue and argument of lyfe in an  
infant new borne is the vagite & cryenge.

Ye shall furthermore vnderstande, that  
onlesse the husbade be in actual and reall  
possession of hys wyses landes, and seased  
B.i. of them

**Tenaunt by**  
of them in her ryght, he shal not be tenaunt  
by the curtesie after her deth. And therfore  
yf landes descende to a mans wyfe, so þ she  
is tenaunt in the lawe, and to every mans  
action, yet yf the husbände haue not made  
an actual entree durynge the couerture and  
matrimony betwene the; he shal not be te-  
naunt by the curtesie, for it shalbe reputed  
and indged his folp and negligence that he  
wolde not entre in her lyfe tyme.

Otherwyse it is of aduousons, rentes,  
and suche other thynges, which forthwith,  
when they descende, be in a man or woman  
wythout any entree or further ceremonie of  
lawe.

Note, that yf tenaunt by the curtesie  
of Englande wyl suffre or make any waste  
in the landes or tenementes that he so hol-  
deth, he is punysshable therfore by action  
of wast.

Also it is to be knowen, that of thynges  
that be in suspense, a man shal not be  
tenaunt by the curtesie, and therfore yf a  
man be the tenaunt in fee simple of certayne  
lande, and doth entremary wyth a woman  
that is the seignoresse or lady of the same  
that hath issue by her, & she dyeth, yet shal he not  
be tenaunt by the curtesie of the lordship.



or feignorie, bycause him selfe is ternaunt of the lande, and therfore the lordshyp is suspended for the tyme, for a man can not be both lorde and ternaunte of one thyng but yf he had not bene ternaunt of the lande, he shulde haue had the lordshyp after þ death of hys wyfe by the curtesye of Englande be ye well.

Of ternaunt in dower.

**T**ernaunt in dower, is she that hath bene marped to an husband þ was durynge the mattymonye betwene them scysed of lādes or tenemētes in fee simple, or fee taylor, whych is deade & he sealed of þ thyrde part of her husbands sayd lādes for terme of her lyfe. For by þ cōmon lawe of þ lande, yf þ husbāde be at any tyme durynge the couerture sealed lawfully whether it be by purchasc or by dyscent, whether in fee or in taylor, and dye, hys wyfe shal be indowed by the coure of the cōmon lawe of the thyrde fote. And in some places by an auncient custome she shalbe indowed of the moptye, yea and though the husbāde were neuer sealed actually durynge

## Of ternaunt

the couerture, yet yf the landes be cast vpon hym by y<sup>e</sup> lawe, so that the law calleth hym ternaunt to euerye mans action, it suffyeth for the woman to demaunde her dower, for it were vntreasonable, that the negligence and slackenelle of entrynge of the husbände shulde hurte the wyues title.

Othertwyse it is, as is sayd before, of ternaunt by the curtesye, for yf lādes descende to a woman couert & the husbāde for slothfulnes or negligence doth not entre in hys wyues lyfe, he shall not be ternaunt by the curtesye, for by al lawes the wyfe oweth obedience & subiection to her husbāde and therfore she can not compell hym to entre, but when landes descende to the wyfe, the husbāde onely hath power to entre at hys pleasure.

And ye shall vnderstande, that onles the wyfe be passed the age of .iiij. yeares at the tyme of her husbādes death, she shall not be endowed by the common lawe.

But it is to be knowen that a woman maye by dyuers wayes estoppe and preiudice her selfe of her dower: as yf she committ any crime for which she is attainted of treason, murder, or felonye, she get in thys case no dower, notwithstandinge she hath the ob-  
tayne



forayed her pardone.

Also yf after the death of her husbände she taketh a lease for terme of lyf of þ same landes wherof she is indowable she loseth her dower of the same. Moreover yf she departeth from her husbände and lyueth in aduoutrye wth an other man, and is not reconciled agayne to her husbände without coercion of the ecclesiastical power, she le- seth her dower after her husbändes death. She shalbe also barred of her dower yf she wyll wythholde frō the heyre the charters and euidence concernyng that lande wher- of she asketh dower: But none other, save the heyre, can wythhold her dower for this cause.

It ought not be vnknown also of what thynges she maye demaunde dower, and of what thynges not. Of landes, mesuagies, aduousons, rent charges, rent seruitces, or seignories in grosse or otherwyse, of villay- nes, of commons certayne, of estouers cer- tayne, she is dowable. But of cōmons, and estouers sans nombre also of annuities, of homage, of thynges of pleasure, as of serui- ces of payment of roles, and semblable, she shall not be endowed.

There be yet two other kindes of dower

B. iij. the

## Of tenaunt

the one is called dowement ex assensu patris, that is to saye, by thassent of the father, and the other is called dowement de la plus beale partie. That is to saye, of the fairest parte.

Dowement ex assensu patris, is when the father is seased of landes in fee simple, and hys sonne whiche is heye apparant, endoweth his wyfe at the churche dore, when he is espoused, of parcell of hys fathers landes, wyth the assente of hys father in wytyng testifinge the same assent, yf in thys case her husbände dye, she maye forthwith entre into the landes so assigned vnto her wythout further appoyntynge or proces of lawe, although the father of her sayd husbände be yet alyue and in actual possession of the lande. But yf she thus do, & take her to thys endowment at the church dore: she can not haue her dower also by the common lawe of the thyrde parte of al her husbādes landes, or any parcel of them, howe be it yf she wyl refuse thys assignement made vnto her at the churche dore, and demaund dower at the common lawe, she maye so do, be it well.

A man may also endowe his wyfe at the tyme of the spousalles, of hys owne lādes, that



**In dower.**

**fo. xii.**

that which he hath in his owne possession, & that dower is called dower ad osium ecclesie sic that is to laye, at the churche doore.

**Dowment** De la plus beale, that is to say, dowment of the fayrest parte shalbe in thys case. When a man is seased of landes whych he holdethe of an other man by knyghtes seruyce, & of other landes whych be of socage tenure, and hath issue whych is wythin the age of. xiiij. yeares & dyc, and the Lorde of whome the lande is holden by knyghtes seruyce entrethe into the lande holden of hym, and the mother of the chyld entreth into the socage tenure as gardeyne in socage, yf in thys case the woman wyll brynge a wyrtte of dower agaynst the lorde whych is gardeyne in chivalrye, he maye plede the special mater and shewe, howe she as gardeyne in socage hath so muche lande, and ther vpon pray the court that she maye be suffered to endowe her selfe of so muche lande beyng in her owne custodie, as amounteth to the thyrde parte of the hole landes. And then the iudgemente shalbe, that the gardeyne in chivalrye shal retayne the lande holden of hym quyte from the woman duringe the nonage of y<sup>e</sup> warde. After whych iudgement and sentence grynē, she maye go,  
B. iij. and

## Of tenaunt

and in presence of her neyghbours indowe her selfe of the best parte of that whiche is in her custodie, amountynge to the thyrde parte of the hole, and then is she called tenaunt in dower de la plus beale.

Finally ye shall vnderstande, that by a statute made in the. xxvj. yere of our most dread soueraygne lord kynge Henry the eyght, it is enacted, that where dyuerse persons haue estates made to them & to theyr wyues and to the heyres of the husbande, or to the husbande and wyfe and theyres of theyr two bodyes begotten, or the heyres of one of theyr bodyes, or for terme of both or one of theyr lyues, or to any other persons and theyr heyres to the vse of the husbande and wyfe or to the wife alone for her ioynture: in euery suche case the womā shal not be suffered to demaunde any dowry of the residue of her husbandes landes by whome she hath her ioynter, agaynst any tenaunt of the lande. But in case she hath no such ioynter: then may she demaunde her dowrye after the course of the common lawe. Wherof ded neuertheles, that yf such womē be lawfullye expelled from theyr ioynter, or any parte thereof wythout fraude or couyn: then shal they be endowed of the residue of theyr husban



husbandes landes for as muche as the landes shall amounte vnto, out of whych they were so expelled and put forth.

Provided also, that yf landes or tenementes be assured to any woman after mariage for terme of lyfe or otherwyse in ioynture (excepte it be by acte of parliamēt) and the wyfe ouerlyue her husbände in whose tyme the ioynture was made: in this case yf wyfe maye refuse the landes so appoynted vnto her in ioynture, and haue her dowry at the common lawe, of suche landes as her husbände was seased of, at any tyme durynge the couerture.

**A** division of inheritaunce.



Ytherunto I haue spoken of free holdes, now, it remaineth to treate of inheritances; not that inheritances be no free holdes for they be free holdes also, but the other estates of whych I haue here tofore treated be onely free holdes, and of no hygher nature, where as a state of inheritaunce, although

## A diuision of inheritaunces.

though it be a free holde, yet it is not to be called by þ name, syth it is a farre more excellent and greater estate. But ye shall vnderstande that of inheritaunces some be of more amplitude and excellencpe then other some be, as that inheritaunce whych is pure, simple, & without limitation of what heyres, whych kynde of inheritaunce is called fee simple. But when I make a limitation of what heyres, the is it called fee tayl, of whych also be two sortes, as here after more at large shalbe declared. Nowe therefore the nature of fee simple is to be sette forth wyth our accustomed cōpendiousnes.

### ¶ Of fee simple.

**F**ee simple is (as I sayde) the moost ample and large inheritaunce that can be in this realme diuised or exco gitate, as that whych a man hath to hym and to hys heyres simply wythout any further limitation, for whether they be of hys owne bodye begotten or not, so that they be the nexte of hys kynde, and wythin the degrees it suffiseth.

So then tenaunt in fee simple is he that  
hath



## Fee simple.

fo. xiii.

hath landes or tenementes (whether it be by purchase or by descent) to hym and to his heyres or assignes for ever. For yf a mā wyl purchase landes in fee simple, he must nedes haue these wordes (hys heyres) in hys purchase, for these be the only wordes that make the state of inheritauce. Therefore yf landes be gyuen to a man for ever & no mention be made of hys heyres: he hath an estate but for terme of hys lyfe, bycause these wordes (hys heyres) do lacke.

Yet neuertheles, yf a mā by his testamēt doth deuise landes to another in such place or case where the custome or lawe wil serue so to do, though he maketh no mention of heyres, but sayeth that he bequetheth to suche a persone suche landes, to haue and to holde to hym and to hys assignes for ever: here a state of inheritauce doth passe, for in testaments the wyl and intent of the testatour is to be pondred, and not the formal and prescripte wordes of the lawe.

Also these termes in the lawe, (franke marriage) and (franke almoine) that is to saye, free marriage and free almoine do include in them wordes of inheritauce.

And therefore yf I gyue landes to a man wyth my doughter in franke marriage with  
out

## Fee simple.

out further addition or mention of heires, thys is an estate of inheritaunce, as we shall hereafter declare more pléteously. In lyke wyse it is of landes gyuen to an house ecclesiasticall in pure and franke almes. Moreover if landes be gyuen to a man and to his blood, or vnto hym and to hys seed, he hath in both cases a state of inheritaunce, for in þe last he hath a fee tayle, and in thother a fee simple. For thys worde seed, & blood, and such lyke do implie wordes of inheritaunce.

But nowe it is to be sene who be sayde a mans heires in the lawe. Ye shall therefore knowe, that my brother or syster by þe halfe bloode, that is to wyte, by the fathers syde, and not by the mothers, or contrary wyse by the mothers and not by the fathers, shall neuer be myne heire nor none that come of them.

Neither my bastarde can be myne heire, nor myne owne naturall father nor mother nor graundfather nor grandmother can be myne heire. For it is a principle & grounde in the lawe, that inheritaunce may linially descende, but ascende it maye not. And therefore yf I haue landes in fee simple and dye without issue of my bodye, my father can not be myne heire, but my fathers brother or syster



or syfter shal, and then yf my vncle or aunte  
dye seased wythout issue, my father shal  
haue the landes as heyre to myne vncle or  
to myne aunt, but heyre to me he can not be.  
But it maye go from me to myne vncle or  
aunte well ynoughe for that is not called a  
linial ascension but a collaterall.

And ye shal note, that by the comon law  
of thys realme, the eldest sonne shal haue  
the hole inheritaunce, and after hym yf he  
hath no issue, the secōde sonne, and so forth.  
And yf I haue no sones but doughters, the  
shal al the doughters together inherite, but  
yf I haue no issue at all, neyther sonnes ne  
doughters, then shal my eldest brother in  
heritance succede me, but and yf I haue no  
brother, then my systers yf I haue any, yf  
not my vncle by my fathers syde, yf the lan  
des be of myne owne purchase. And to be  
shorte yf there be none in lyfe of my fathers  
syde, it shal go to my mothers syde and yf  
there can be founde no heyre neyther by fa  
thers syde nor yet by mothers, then shal it  
reuerte & elchete (as they cal it) to the lord  
of whome it was holden, for euerye lande  
must nedes be holden of some lord, as shal  
be here after shewed. But yf lādes descēde  
vnto me by my mothers syde, the yf I fayle  
of issue, the landes shal descende onely to  
my

## Fee simple.

my heyres of my mothers syde, and neuer to myne heyres of my fathers syde: as on the contrarie syde, yf I haue landes or any hereditamentes by dyscent from my father or bys bloode, they shall neuer descende to my heyres by my mothers syde.

Thus ye se a great difference in thys be halfe, betwene purchaseth landes & landes whych descende from my auncestoure.

Yf there be thre sonnes, and the myddel sonne purchaseth landes and dye wythoute issue, the eldest shall haue the landes & not the yongest.

Also it is a principle in our lawe, that none can be myne heyre of landes that I hold in fee simple, oules he be myne heyre by the hole blood that is to say, both by father and mother, for yf a man hath issue two or thre sonnes by sondry wyues, and the eldest purchaseth landes in fee and dyeth wythout issue, bys halfe brethre I meane those that be not bys brethre both by the fathers syde and mothers syde shall not haue the lande. but it shal go to bys vnkle. Lyke wyse yf a man hath by bys fyrste wyfe a sonne and a daughter, and by bys secunde wyfe another sonne, and the sonne by the fyrste wyfe purchaseth landes in fee simple and dyeth wythout



wythout issue: the syster german, that is to say, both by fathers syde and mothers shal haue the landes by discent as heyre to her brother, and not the yonger brother, for as muche as the yonger brother can not in thys case be heyre to hys elder brother, bycause he is no brother germane vnto hym. Other wyse it is of landes or other hereditamentes entayled as shalbe hereafter specified.

And yf a man be seysed of landes in fee simple, and hath issue a sonne and doughter by one wyfe, and after the death of his fyrste wyfe a sonne by an other, and dyeth, and the eldest sonne entreteth into the landes and after dyeth wythoute lawfull issue of hys bodye, the doughter shal haue the landes and not the yongest sonne and yet the yongest sonne is heyre to his father, but he is not so to hys brother. But yf in thys case the eldest sonne hadde not entered after the death of hys father but had dyed before any entre made by hym, then shal not the syster germane entre but the yonger brother is heyre to hys father, bycause the eldest brother was neuer in actual possession, whiche is requisyte to that person p claymeth to be heyre collaterally.

But

## Free Simple

But to the lynnial heyres, it suffyseth that the aunccestour shulde haue bene heyre yf he had lyued, I meane as thus. A man is seased of landes & hath issue a sonne & doughter by one wyfe, and afterwarde a sonne by an other, he dyeth, and after hys death the eldest sonne entreth not but dyeth wythout issue before he can make actual entree, here in thys case hys syster shal not haue the landes as heyre to her brother, bycause her brother was neuer actually possessed, but the younger brother shall haue them as heyre to hys father. Yet yf the eldest sone in that case had left behynde hym issue of hys bodye, whether it had bene sone or doughter, thys issue not wythstandynge, that the father of the issue was neuer possessed eyther actuallye, or in the lawe, shall haue the landes, & shall conueye hys descent from hys father, the cause hercof is thys, that the sonne or doughter is lynniall heyre, where as the brother, syster, vncle, aunt. &c. be heyres collateral, and so ye shal obserue a dyuersitie.

I call an actual possession when a man entreth in dede into landes whych be to hym descended, but a possession in lawe, is called when landes be descended to a person, and he hath not yet really and actuallye entred into



into them. For notwithstandinge that he is not in actual possession, yet he is possessed in the lawe, that is to saye, in the eye & consideration of the lawe he is demed to be possessed, for as much as he is ternaunt to every mans action that wyl sue for the sayd landes, for els assuredly thete shulde insue an intollerable inconuenience, as we shal more copiously open in an other plate.

Ye shall furthermore vnderstande that this worde inheritance is not onely to be accommodate and applyed to that whiche cometh by dyscent or succession fro a mans aunccestours or predecessours: but also to every purchase in fee simple, or fee taylor.

Of fee taylor.

**Y**e shall vnderstande, that before a certayne statute of Westminster seconde, there was no state taylor but al was fee simple, eyther purely that is to saye, without condition, or at lest waye conditionally as appeareth by the pretence of p said statute, but nowe sythen the promulgatyng of that statute, diuerse formes of state taylors haue rylen.

Fee taylor is when it is prescribed and limited

L.i.

## Fee taylor.

Impytted in the gyfte, what sorte of heyres  
and by whome engendred shall enherite.

As for example, I gyue landes to a mā and  
to hys heyres and go no further thys is fee  
simple: but yf I make a limitation, eadde  
of hys body begotten, nowe is it fee taylor,  
that is to saye, a fee or inheritance limy-  
ted, prescribed, determinate, or assigned.

So that yf I gyue landes to a man and to  
his heyres, he hath fee simple, but yf I gyue  
landes to hym and to hys heyres of hys bod-  
ys lawfullie begotten, he hath but a fee  
taylor, for as muche as I appoynte, limite,  
prescribe & expresse what heyres they shalbe  
and for lacke of suche heyres the gyfte shal  
be expyred and worne out, and the landes  
shall reuerte agayne to the gyuer or hys  
heyres.

But ye must observe and note that there  
be two kyndes of fee taylor. There is a gene-  
rall taylor, and there is a speciall taylor.

Fee taylor generall is as where landes  
be gyven to a man and to hys heyres of hys  
body begotten, without any mentioninge  
and expresseinge by what woman they shal  
to be begotten: And therefore yf a man be  
tenaunte in the generall taylor of landes, and  
taketh a wyfe and hath issue by her, the



Byeth and afterwarde he taketh an other wyfe, of whome he hath also other issue, here eyther of these issues is inheritable to thys lande entayled. But yf I expresse in the gyfte by what woman the heyres shall be procreate and engendred, then is it an especiall taylor, as for example to make the thynge playne, yf landes be gyuen to a man and to the heyres of hys body lawfully begotten by Margaret hys wyfe, thys is an especiall taylor, for the issue of him begotten by any other woman, shall neuer inherite by force and vertue of the taylor. Lyke wyse it is, yf landes be gyuen to a woman and to the heyres of her body lawfully begotten (and shewe not by what man) thys is a generall taylor, but yf I go forth & saye by such a man her husbunde, then is it an especiall taylor.

Also yf I gyue landes to a man and to his wyfe, and to the heyres of theyr two bodies lawfully begotten: thys is an especial taylor, as wel in the husband as in the wyfe.

Semblably it is, yf a man gyueth landes to an other man wyth hys daughter or kyns woman in fraike mariage, this worde (fraike mariage) emplyeth a state taylor especiall, and in thys case as well the man as the woman hath estate in the speciall taylor.

## Fee tayle.

But yf I gyue landes to a man and to such a woman, & to hys heyres that he shall begette of her : here the woman hath estate but for terme of her lyfe , and the husbāde an estate in the especiall tayle . And lyke wyse it is in the womans behalfe , as yf I gyue landes to a man and to hys wyfe, and to her heyres of the body of her said husbāde engendred , he hath an estate but for terme of lyfe, and she an estate in the speciall tayle. But in both cases, yf I had sayd to the heyres and not hys or her heyres , then shoulde eyther of them haue had an estate in the speciall tayle, bycause thys worde heyres is as wel referred to the one as to the other .

Ye shal also vnderstande, that yf landes be gyuen to a man, and to the heyres males of hys bodye, thys is a state tayle, & in thys case the heyre female shall neuer inherite.

Synally it is to be noted, that of landes whych a man hath in fee simple the possession of the brother shal cause the syster germaine that is to saye, the syster both by the fathers side & mothers, to inherite, & in this case the brother by the halfe blood shall not inherite, as here tofore was sayd, but of landes which be entailed otherwise it is. Therefore yf a man be seised of landes in the generall



**T**enaunt after possibilitie fo. xix.  
neral taylor, and hath issue by his first wyfe  
a sonne and a doughter, and also a sonne af-  
terwarde by an other wyfe, and dyeth, and  
the eldest sonne entreth into the landes and  
after dyeth, the syster germaine to the eldest  
sonne shall not haue the landes but the yon-  
ger brother of the halfe blood, bycause who-  
soever shall inherite landes or any other he-  
reditamentes in taylor, must claime them as  
nexte and immediate heyre, not to hym that  
dyeth laste seased of the landes but to hym  
whome the landes were firste gyuen vnto,  
whych in the case before remembred, is the  
sonne and not the doughter.

Thus ye shall make a greate diuersitie  
betwene the forme of succession in landes of  
fee simple, and the forme in fee taylor.

**T**enaunt after possibilitie  
of issue extincte.

**W**hen landes, tenementes or other heres-  
ditamentes be gyuen to a man and to  
hys wyfe, and to the heyres of theyr  
two bodyes lawfully begotten, yf in  
this case eyther of them chaunce to dye be-  
fore they haue issue betwene them, he or she  
that ouerlyueth, is styll tenant in taylor, but  
wythout all possibilitie of any issue that can

C. iij. be

## of issue extincte.

be heire to these landes or hereditamentes thus entayled, and for thys cause he or she thus ouerlpyng is called ternaunte after possibilitie of issue extincte, for in such a ternaunt is all possibilitie of issue that may be inheritable to these landes by force of the gyfte in tayle vtterly extincte and quenched and by hys or her death the state tayle shall expyre, cease, and be abolyshed for euer, and shall reuerse and turne agayne to the gyuer or donour from whence it came.

Yet for as muche as thys ternaunt after possibilitie of issue, had ones an inheritance in hym, he shall not be punished by an action of waste, though he maketh neuer so muche waste in the landes and tenementes, where as yet in effect he is but a ternaunt for terme of lyfe.

And thys of estates at thys presente tyme shall suffice. But to the intent ye maye the more easely comprehend all the membres of the diuision of possessions and estates whych men maye haue in landes tenementes and other hereditamentes, it shall not be euell done to set forth as it were in a table before your eyes the diuision thereof whych is thys.



**Fee simple**

**State of  
inheritance.**

**Ben  
Spe**

**Fee tayle. After**

**After the  
common  
lawe.**

**Curtseye of En  
Dowre.**

**Frankfeit  
ouelp.**

**Terme of lyfe.  
Terme of other:**

**Frank  
feit**

**Whofe  
feits  
on of**

**After the  
custome.**

**Whych is divided in ly  
maner as franktenement  
by the common lawe.**

**Terme of yeares.**

**Keall**

**Warde of landes.**

**Chatel**

**At wyll.**

**Baronall. All goodes monables.**

**Aug.**

## Joynテナuntes. Of parteners or coheyrers.



Wherunto I haue made a cōpendious and short declaratiō of estates of all sortes. But where I sayd that amōge sisters there is no prerogative or preeminence concernyng the inherencyng of theyr auncestours lādes but that they shalbe altogether inheritours, & make as it were but one heyre: it is expedient to make a further declaration & proteste in thys behalfe, & to shewe howe & in what maner thys partition shalbe made.

But ye shall vnderstande that there be besyde parteners at the cōmon lawe, which be only sisters, also parteners by custome whych is amōge brothers contrary to the cōurse of the common lawe, and thys custome is in some places of Kent, & in other places where landes and tenementes be of the tenoure of Gauekynde.

Ye shall therfore knowe that whē a man is leysed of landes in fee simple or fee tayle and hath no issue but doughters, and dyē, and the doughters do entre into the landes thus descended vnto them, nowe they be called parteners, or coheyrers, and by a wyrt called



## Of parceners. fol. xxi.

called: De partitione facienda brought by one of them agaynst the others, they shal be constrayned by the lawe to suffre an egall partition to be made of the lādes bytwene them.

Nowe partition maye be made in sundrye wayes. One waye is when they themselves do make partition betwene them of the hole heritage & do agree vnto the same, & do entre every one into her parte so allotted vnto her.

An other way is when by all they: agreement and consent one common frende doth make the partition. In whych case y eldest syster shal haue the fyrst election, and after her the secoude syster, and so forth. But yf they agre that the eldest syster shal make the partition, and she maketh it, then the eldest shal not chose fyrst, but shal suffer all her sisters to chose before her, as it is thought.

There is also an other forme of partition whych is egallye to diuide the landes into so many partes as there be cohettes or parceners, and to wyte every parte so diuided in a seuerall scroule of paper, and to putte the sayd scroulles in to a bonette, or to enclose them seuerally in balles of ware, and then the eldeste syster to chose whych balles

L.v.

the

## Of parceners.

she wyll, or to put her hande into the bonet and to take a scroule, & to holde her to her chaunce and allotment, and so consequently euerp syster after other.

And ye shall note, that partition by agreement maye as well be made by nude & bare wordes wythout wytyng as by wytyng.

That yf any of the parceners wyll not suffer any partition to be made then maye the other that wolde haue partition, purchase a wyte called *De partitione faciēda* agaynst them that refuse partition, to compell the same to suffer partition to be made accordynglye, and then by the iudgement of the courte, the wyte by the serement and othe of twelue men shall make partition by twene them, and shall assigne to eche syster her porcion, as he shall thynke good, wythout gpyng any election or choyse to the eldeste.

And yf two Manours or meeses happen to descende to two sisters, & the maners be not of egall value, then maye she to whome the lesse maner or meese is allotted, haue assigned vnto her a rente proportionablye out of the other maner.

Finally, ye shall vnderstāde, that yf a mā be seased of lādes in fee simple, & hath issue  
two



two daughters, and gyueth with one of his daughters to an other man that shal marie her, the thyrde or fourth parte of his lande in franke mariage and dyeth, yf in this case the daughter that is in thys wyse bestowed and aduanced, wyll haue her porcion of her fathers heritage, she muste putte her lande gyuen vnto her in franke mariage in hoche-  
pot newe agayne. I meane she muste be con-  
sented to suffer her sayde landes to be com-  
mixte and mengled wth the other landes  
of whiche her father dyed seased in fee sim-  
ple, so that an equall deuision may be made  
of the hole, or els she shall haue no parte of  
those lādes, of which her father died seased  
But yf her father had made vnto her but a  
cōmon gyfte in taylor or a feffement in fee, she  
shulde not nede to put her landes in hoche-  
pot, but maye very well kepe & retayne the  
styl, & also haue as good a part of the rest of  
the landes of which her father dyed seased,  
as her other sister or sisters haue. For a gift  
in franke mariage, is accompted the mooste  
free and mooste lyberall gyfte that can be,  
and that gyfte whych the lawe iudgeth to  
be onelye for the aduancement and besto-  
winge of the daughter, where as feffe-  
mentes in fee simple & also cōmon gyftes in  
taylor

## Of parceners.

tayle be accustomedly for other causes, and for the aduantage rather of the gyuour, or feffour then of the taker.

## Of Joyntenautes.



Wherunto verely haue we spoken of cohettes, called parceners commonly, whych as is heretofore declared do come to landes and other hereditamentes ioyntly by the course operation & act of the lawe. Now shall we speake somewhat of the, which eyther ioyntely or seuerally come to landes tenementes or other hereditamentes by theyr owne purchase, acte, procurement & working. And of these, they that come to them by one ioynte tittle waye or colour be called ioyntenautes but they that come seuerally or by seuerall tittles, wayes, or colours to landes or tenementes, be named tenautes in common.

So then, yf a man beyng seised of lades or tenementes or other hereditamentes, shall therof infeffe two, thre, foure or more, to haue and to holde to them in fee simple, fee  
tayle,



## **Ioynテナンテs. fo. xxiij.**

taile, or for terme of theyr lyues, or for terme of an others lyfe, these persones so infeffed and leased be called ioynテナンテs.

Also yf two or mo do expel and dysseise an other man of any landes or tenementes to theyr owne behoufe & vse, these disseisors and wrongdoers are now become ioynテナンテs, bycause by theyr owne acte they come ioyntly to thys lande. But yf they do disseise an other man to þe vse only of one of them, in thys case they be not ioynテナンテs but he to whose vse the disseisin is made, is tenaunt alone of the same, and the others haue nothyng in the tenauncye, but be called aydours or coadiutors to the dysseisin.

And ye shal vnderstande, that a disseisin is properly, where a man entereth into any landes or tenementes there where his entre is not lawfull, and putteth out hym which hath the freholde of the same.

And ye shal furthermore know, that the nature of ioynテナンcie is, that he whiche suruiueth and ouerlyueth the other, shall haue to hym selfe alone þe hole and entier tenauncie accordyng to that estate whiche he shulde haue had yf the ioynTURE hadde bene continued, as (for example) thre ioynテナンテs be of landes in fee simple, and the  
one

## Joyntenauntcs.

one hath issue and dyeth, in this case the two whych do ouerlpye they? felowe, shall haue the hole landes betwene them, and the issue of hym that is departed getteth no thyng. And yf the seconde ioyntenaunt hath also issue & dye, the thyrde whych hath ouerlpyed them both, shal now haue and enioy the hole to hym and to his heires for euer more.

But otherwyle it is of coheires whych in our law be called partners. For yf there be .iiij. suche coheires or parteners, and before any partition made, the one hath issue a sonne or a daughter and dyeth, his portion shall descende and fal to his chylde, and shal not runne amogst the other ioyntheires or coparteners. Howbeit yf suche partener or coheire had dyed wythout issue, then shuld his portion haue descended to his coheires. But how? not by force of suruuer or ouerlpying which in latin is called Jus accrescendi, but by very descent, for where any of the coheires dye wythout issue who can be heire to hym or her so dyenge, but thother coheire or the rest of the coheires yf ther be many?

And lyke as this ryght of suruuer or ouerlpying holdeth place amonges ioyntenauntcs



## Joynttenantes. Fol. xxliii.

tenantes of landes and tenementes so in lyke  
manner it holdeth place amonges them which  
have ioynte estate or possession with others  
of chattelles whether they be real or per-  
sonall. As (for example) yf a lease of lan-  
des or tenementes be made to me for terme  
of certayne yeares, the ouerlure or ouer-  
lures that haue the hole during the terme  
by force of the same lres. So of chattelles  
personall yf an horse, oxe, grayne or other  
suche personall chattell be giuen to me, he  
wherby the ouerlureth shall haue the same as  
hore. In semblable wyse it is of dettes and  
dueties. For yf an obligation be made to  
me for an dette, he that ouerlureth shall  
haue the hole dette or dette, also of any  
conuauentes and contractes. Also some Joynttenantes may be which  
may haue ioynte estate and be ioynttenantes  
for tithing of the pr lyues, and yet haue seuer-  
all iheritaunces. As wher landes be  
gyn to two men and to the heyres of they  
two bodies engendred, in this case these  
two persones haue ioynte estate for terme  
of the pr two lyues. And yet they haue seuer-  
all iheritaunces. For yf the ouerlureth shall  
and dyt, the other that suruiueth shall haue  
all by force of p suruiuour for terme of hys  
lyfe,

## Joyntenautes.

lyfe. And yf he that suruiveth hath also issue & dye, then the issue of the one shal have the halfe of the lāde & the issue of the other shal have thother halfe, and they shal holde the lande betwene them in commune and shalbe not joyntenautes but tenautes in common and the cause and reason why such donees in suche cases have joynte estate for terme of theyr lyues is, for that at the beginning the landes were given to the two, which wordes without more saying, make a joynt estate to the for terme of theyr lyues. For yf a man wyll let lande to another by dede or wythout dede not makynge mencio what estate he hath and of thys maketh lyverey of seisin in this case & lesser shal have a state for terme of hys lyfe. And so forasmuch as the landes were given to the, they have a joynt estate for terme of theyr lyues. But the cause why they have severall inheritance is this, for that they can not by possibility have an heyre betwene them engendred as a man and woman may have wherfore the law wyll that theyr estate and theyr inheritance shal be suche as reason wyll after the forme and effecte of the wordes of the gyfte, and that is to the heyres that the one engendreth of hys bodye by any of hys wyves,



## Joyntenauntes. Fol.rrb.

wyues, and to the heyres that the other engendreth of his bodye by any of his wyues So it behoueth by necessitie of reason, that they haue seuerall inheritaunces. And in suche case yf the issue of one of them after the death of them both doth dye, so that he hath no issue alpyue of his bodye engendred: then the donour whiche gaue the landes or hys heyre maye entre in the halfe as in hys reuerſiõ though the other hath issue alpyue. And the cause is that for asmuche as the inheritaunces be seuerall, therfore the reuerſiõ in the law is seuered, and the suruiuour of the issue of the other shall holde no place to haue the hole. And as it is sayd of males in the same maner it is where lande is gyuen to two females & to the heyres of theyr two bodies begotten.

Also yf landes be gyuen to two and to the heyres of one of them, thys is a good ioyntenauncie, and the one hath a free holde, and the other hath fee simple & yf he which hath the fee simple dye he that hath the free holde shall haue the hole by the suruiuoure for terme of hys lyfe. Lyke wyse it is where tenementes be gyuen to two and to the heyres of the bodye of one of them engendred, the one hath free holde & the other fee taylor.

D.i.

Note

## **Joyntenautes.**

**Note** yf two joyntenautes be seyled of estate of fee simple and the one graunteth a rent charge by hys dede to another out of that whiche to hym belongeth, in thys case durynge the lyfe of the grauntour the rent charge is good and effectual, but after hys decease the rent charge is voyde, as to charge the landes for he that hath the lāde by the suruiuoure shall holde all the lande discharged, the cause is for that he that suruiueth claymeth to haue the lande by the suruiuoure & not by discente of hys felowe

But otherwyle it is of parceners or coheires, for yf there be two parceners in fee simple and before any partition made, the one chargeth that, that to hym belongeth by his dede of a rent charge and dyeth without issue, here that which to hym belongeth descendeth to the other parcener and in this case the other parcener shall holde the land charged, bycause he cometh to that halfe by discent as heire.

Also yf there be two joyntenautes in fee simple wythin one borough wher the landes & tenementes within the same borough be deuifable by testamēt, yf the one of p̄said joyntenautes deuylse that which to him belongeth, by testamente, & dye, thys deuise is  
legation



## Joyntenautes. Fol. xxvi.

legation is voyde. And the cause is for that no deuyle may take effecte tyl after þe death of the testatour whych bequethed & deuised the same, and by hys death all the lande incontinent cometh by the lawe to his felowe that suruiuerh by the suruiuour whych neyther claymeth nor hathe any thyng in the lande by the deuyle but in hys owne ryght by the suruiuour after the course of þe lawe and for thys cause suche deuyle is voyde.

But otherwyse it is of parceners leased of tenementes deuysable in suche case of deuise for the cause aboue remembred. Also it is comonly sayd that euery ioyntenaunt is leased of the lande that he holdeth ioyntlye par my & par tout, that is, throughe out & by all. And this is as muche to saye, that he is leased by euery parcell and by al, which sayenge is true for in euery parcell and parte and throughe out all the lādes & tenemētes he is ioyntly leased wpyh hys felowe. Also yf two ioyntenautes be leased of certayn lādes in fe simple & thone letteth that, that to him belōgeth to a strāger for terme of .xl. yeres & dyeth wbin the terme, in this case after hys death the lessee may entre & occupie the halfe to hym letten durynge the sayd terme, though the lessee neuer had possessiō of it in

## Joyntenauntes.

the lyfe of the leffour by force of the lees. And the dyfference betwene the cafe of the graūt of a rent charge, and this cafe is this, that in the graūt of a rent charge by a ioyntenaunt the landes or tenementes abyde alwaye as they were afore without that that any hath any ryght to haue parcel of the tenementes but them selfe and the tenementes abyde in fuch plyte as they were before the charge. But where a lees is made by a ioyntenaunt to another for terme of yeares, incontinent by force of the lees the leffee hath ryghte in the fame lande, that is to faye, of all that, that to hys leffoure belongeth by force of the fame lees durynge hys terme. Finally yf a ioynte eftate be made of lande to the hufbande and wyfe and to the thyrde person, in thys cafe þ hufbande & the wyfe haue not in the lawe in theyr ryght but the halfe, and the thyrde perfone ſhal haue as muche as the hufbande and the wyfe haue that is to faye, the other halfe.

And the caufe is for that the hufbande and wyfe be but as one perfone in the eye of the lawe, and it is here in lyke cafe as yf eftate be made to two ioyntenauntes where the one hath by force of ioynture the one halfe, and the other the other halfe. In ſem  
blable



## Joyntenauntes. fol. xxviii.

blable wyse it is where estate is made to husbande and wyfe and to the other two men, in thys case the husband and the wyfe haue not but the thyrde parte and the other two men the other two partes.

### Tenauntes in common.

**T**enauntes in common (as I said before) be they that haue landes & tenementes in fee simple, fee tayle, or for terme of lyfe, whych haue such landes & tenementes by seuerall tytles, and not by ioynte tytles & none of them knoweth that whych is seuerall to hym. And in thys case they ought by the lawe before partition made betwene them to occupye suche landes and tenementes in comon and for vnderded to take the profytes in common. And bycause they come to suche landes and tenementes by seuerall tytles & not by one selfe ioynt tytles and theyr occupation & possession in the same is amonge them in common, they be called tenauntes in common. As for example, yf a man enfeoffe two ioyntenauntes in fee simple & the one of them alieneth that that to hym belongeth to another in fee, nowe the other ioyntenaunte and he to

D. ij. whom

## Tenautes in cōmon.

Whom the alienacion was made be ioyntenautes in common, for that they be leased of suche tenementes by severall tytles, for the one cometh to the one halfe by the feoffment of the ioyntenaunte and the other hath the other halfe by force of þe fyrst feoffment made to hym and to hys fyrst felow and so they be in by severall tytles and by severall feoffementes.

And it is to wpyt, that when it is sayd in any booke, that a man is leased in fee wythout more sayenge or addition, it shalbe vnderstande fee simple, for it shal not be vnderstande by suche worde in fee that a man is leased in fee taylor excepte there be put to it suche addition (taylor.)

Also yf thre ioyntenautes be & the one of them alieneth that whych vnto him belongeth to an other in fee, in thys case the alienee is tenaunt in cōmon with the other two ioyntenautes. But yet the other two ioyntenautes be leased of the two partes iointlye and of these two partes the surviuoure betwene them holdeth place.

Also yf there be two ioyntenautes in fee & the one gyueth that that vnto hym belongeth to another in the taylor, the donee & the other ioyntenaunt be tenautes in comō. But  
yf the



## **Tenauntes in cōmon. Fo. xxviii.**

yf the landes be gyuen to two men & to the heyres of they: two bodyes engendred, the donees haue ioynte estate for terme of they: lyues, and yf eche of them haue issue & dye they: issues shal holde in common.

Also yf lādes be gyuē to two mē to haue & to holde the one halfe to the one & to hys heyres, & the other halfe to the other and to hys heyres, they be tenauntes in common.

Also yf a man leased of certayne landes enfeofeth another in the halfe of the same lande wythout any speche of assignement or limitation of the same halfe in seueraltie at the time of the feoffement, thē the feoffee and the feoffour shal holde they: parties of the lande in common.

And as it is of tenauntes in common of landes or tenementes in fee simple or fee taylor, even so it is of tenauntes for terme of lyfe. Therefore yf two ioyntenaūtes be in fee and the one letteth to a man that that vnto hym belongeth for terme of lyfe & the other iointenaūt letteth þ which to him belongeth to another for terme of lyfe also, these two lessees be tenaūtes in cōmon for terme of they: lyues.

And yf a mā let landes to two mē for terme of they: lyues, of whō þ one graūteth al  
D.iiij. hys

## **Tenauntes in comon.**

hys estate to another: then that other ternaunt for terme of life, and he to whom the graunt is made shalbe ternaunte in comon during the tyme that both lessees be alyue

Note yf there be two ioynternauntes in fee, and the one letteth that that vnto hym belongeth to another for terme of lyfe: the ternaunt for terme of lyfe duringe hys lyfe and the other ternaunt that dyd not let be ternauntes in common. And vpon thys case a question maye ryse as thys. Let the case be that the lessour hath issue & dyeth, lyuyng thother ioynternaunt hys felowe, & lyuyng the ternaunt for terme of lyfe, the question is whether the reuerfion of the halfe that the lessour hath shal descende to the issue of the lessour or whether the other ioynternaunt shall haue it by the suruiuour or no. And some haue said, that the other ioynternaunt shall haue the reuerfion by the suruiuour, for as muche as, when the ioynternauntes were ioyntlye seysed in fee simple, though one of them made estate of that that vnto hym belongeth for terme of lyfe, and though he hath severed the francke tenement of that that to hym belongeth by the lees, yet he hath not severed the fee simple.

**But**



## **Tenautes in comon. fo. xxix.**

But the fee simple abideth to them ioyntly as it was before. And so it semeth vnto the, that the other ioyntenaunt which suruiueth shall haue the reuerſion by the ſuruiuoure. But other haue thought the contrarie, and thys is theyr reason. When one of the ioyntenautes letteth that whych vnto hym belongeth to another for terme of lyfe, by ſuch lees the franke tenement is ſeuered from the ioynture. So that the reuerſion that is dependaunt vnto the ſame franke tenement is ſeuered from the ioynture. Forthermore yf the leſſour had reſerued to hym a perely rent vpon the leas, the leſſour onely ſhulde haue the rent whych is a profe that the reuerſion is onely in hym, and that the other hath nothyng therein.

Alſo yf the tenaunt for terme of lyfe were impleded and made default after default, the leſſour ſhalbe onely hereupon receyued to defende his ryght and not his felowe, whych proueth the reuerſion of the halfe to be only in the leſſour, and ſo conſequently, yf the leſſour dye, lyuyng the leſſee for terme of lyfe, the reuerſion ſhal diſcende to the heyres of the leſſoure and ſhall not come to the other ioyntenaunt by þe ſuruiuour after theſe men's opinions. But in this caſe, yf the ioyntenaunt

## Tenauntes in comon.

Jaunt that hath the franktenement, haue issue and dye, luyng the lessour & the lessee, then it semeth that the issue shall haue the halfe in hys demesne in fee by discēt for asmoch as the franktenement maye not by nature of the ioynture be annexed to a reuercion, and it is certayne that he that letted, was seased of  $\frac{1}{2}$  halfe in hys demesne as of fee, and that none shal haue any ioynture in hys franktenement. So that thys shal descend to hys issue.

Yf thre ioyntenauntes be, and the one releaseth by hys dede to one of his felowes al the ryght he hath in the lande, then hath he to whom the releas is made the thyrde part of the lādes by force of the releas, and he & hys felowe shall hold the other two parties ioyntly. And as to the thyrde part that he hath by force of  $\frac{1}{2}$  releas he holdeth it with hym selfe and hys felowe in comon.

And it is to wit, that sometyme a dede of releas shall take effect to put the state of hym that made the releas in hym, to whom the releas is made as in the case afor sayd.

Also yf a ioynt estate be made to the husband and wyfe and to a thyrde parson, and the thyrde parson releaseth hys ryght that he



## Tenautes in comon. fo. xxx.

he hath to the husband: than hath the husband that halfe wyche the thyrde parson had, and þe wyfe of this hath nothynge Semblably yf the thyrde parson had releasid to the wyfe not namynge the husband in the releas, then shuld the wyfe haue the halfe that the thyrde parson had and the husband nothynge of thys but in ryght of hys wyfe, bycause such releas shall enure to put the estate to hym to whom it was made of all that that belongeth to hym that made the releas. Agayne in some case a releas shall enure and serue to put all the ryght that a man hath that made the releas in hym to whome it is made. As a man beyng leased of certayne landes is disseised by two disseisors yf the parson disseised by his dede release al hys ryght to one of the disseisors, then he to whome the releas is made shall haue and holde al to him alone and put out hys felowe of the occupation of it. And the cause is, for that the two disseisors were leased by wronge by them done agaynst the lawe, & whē one of thē getteth the releas of him þe had right to entre, thys ryght resteth in hym to whom the releas is made and in such plyght as yf he that had the ryght had entred and enclosted hym of the same.

And

## **Tenauntes in comon.**

And þ cause is , for that he that before had an estate by wronge hath now by the releas a ryghtfull state.

And in some case a releas shall enure & take effecte by way of extinguishment, and such a releas shal helpe the ioyntenaunt , to whom the releas was not made as well as hym to whom it is made as yf a man be disseised, & the disseisor maketh a feoffement to twoo men in fee, yf the persone disseised release to one of þ feoffees in fe by his dede then such releas shall enure to both the feoffees bycause the feoffees haue estate by the lawe that is to saye by the feoffement & not by wronge done to any other.

And in lyke maner yf þ disseisor make a leas to a man for terme of life, the remainder ouer to another in fee , yf the disseysie wol release to the tenaunt for terme of lyfe all hys ryght, thys releas serueth as wel to hym in the remaynder , as the tenaunt for terme of lyfe . And the cause is for that the tenaunt for terme of life cometh to his estate by the course of the lawe, and for his cause, the releas shal enure & take effecte by waye of extinguishment of the ryght of hym that hath released . And by thys release the tenaunte for terme of lyfe hathe no greater estate



## **Tenauntes in comon. fo. xxxi.**

estate thē he had before the releas made vn  
to hym & yet the ryght of hym that released  
is all vtterly extincte and gone. Wherfore  
for asmuch as suche releas can not enlarge  
the state of the tenaunt for terme of lyfe, it  
is reason, that it shall scrue hym in the re=  
maynder.

And yf there be two parceners, and the  
one alieneth his part to another: the other  
parcener and the alienee be tenauntes in cō  
mon.

Furthermore tenauntes in comon maye  
be by tytle of prescriptiō yf the one and his  
auncestours or they whose estate he hath in  
the halfe, haue holden in comon the same  
halfe with the other tenaunt that hath the  
other halfe and wyth hys auncesters or thē  
whose estate he hath as vndeuided time out  
of mynde.

Also ye shall marke, that in some case te  
nauntes in comon ought to haue of theyr pos  
session seuerall actions, and in some case  
they shal ioyne in one action, for yf there be  
two tenauntes in comon and they be dys  
seised, they ought to haue agaynst þ dyssei=  
sour two assises and not one assyse. For eue  
ry of them ought to haue an Assyse of hys  
halfe, bycause they were seised by seuerall  
tytles,

## Tenauntes in comon.

tytles, but otherwyse it is of ioyntenauntes for yf there be. xx. ioyntenauntes and they be disseysed, they shall haue in al theyr names but one Assyle, bycause they haue but one ioynt tytle.

Also yf there be thre ioyntenauntes, of whō the one releaseth to one of his felowes al the tyght he hath & afterward the other two be diseased of the hole, in this case they shall haue in bothe theyr names one Assyle of the two parties. And as to the thyrde parte he to whom the releas was made oughte to haue therof an Assyle in his owne name, by cause as to the thyrde parte he is tenaunt in comon.

Also as to sue actions that touche the realtie, there is dyuersitie betwene parceners that be in by dyuers discentes, and tenauntes in comon. For yf a mā leased of certayne landes in fee, hath issue two daughters and dye, and they entre into the landes as coheyrres, and eche of them hath issue a sonne & die without partitiō made betwene them, so that the one halfe descēdeth to the son of the one parcener, and the other halfe to the son of the other and they entre and occupy in comon, and be disseased, in this case they shall haue in theyr two names one Assyle



## Tenauntes in comon. Fo. xxi

life and not two Assises. And the cause is, though they come in by diuers discentes yet they be coheyrers and parceners.

Also yf two tenauntes in comon of certeyne landes in fee, gyue the same to a nother man in the taile, or let it to another for terme of lyfe, yelding an annuitie or certeyn rent and a pounde of peper, or an hawke or an horse and they be leased of these seruises and afterward all the rent is behynde, and they dystaine for it, and the tenaunte maketh them rescous, in thys case as to the rēt and the pound of peper they shall haue two Assises, and as to the hawke and the horse but one Assise. And the cause why they haue two Assises as to the rent and pounde of peper is, for that they were tenauntes in comon by severall tytles, and whan they made a gifte in the taile or leas for terme of lyfe, saving and reseruyng to them the reuerfion, and yeldyng to them certeyn rent: thys reseruatiō is incident to theyr reuerfion.

And bicause theyr reuerfion is in comon and by severall titles, even as theyr possession was before the rent and other thynges whiche may be severed and whiche were to them reserved vpon the gyfte or vpon the  
the

## Tenauntes in comon.

the leas (which be incidēt by the law to the reuerſion) therfore ſuche thinges ſo ſeuered be of the nature of reuerſion. Wherefore it behoueth that the rent and the pound of pepper which may be ſeuered be to them in comō by ſeueral titles, And of this they ſhall haue two Aſſes & euery of thē in his Aſſe ſhall make his plainte of the halfe of the rēt and of the halfe of the pound of pepper. But of the hawke and the horſe which cā not be ſeuered they ſhall haue but one Aſſe, for it were an abſurditie and thyng inconueniēt to make a plaint in Aſſe of the halfe of an hawke, or of the half of an horſe. In lyke maner it is of the other rentes and ſeruices that tenauntes in comon haue in groſſe by diuers titles.

And ye ſhall vnderſtand that concerning actions perſonals, tenaūtes in comō ought to haue them ioyntly in al their names, that is to ſai of treſpas or of offences that touch theyr tenemētes in comon, as of breaking of their houſes, brekyng of theyr closes, and paſtures, waſting and defoulynge of theyr graſſe, cutting of theyr woodes, & of fiſhing in theyr pondes, and ſuche other, and they ſhall recouer ioyntly damages, bicauſe the accion is in þ perſonalitie & not in þ realtie.

Also



## Tenauntes in comon. fo. xxxlii.

Also yf ioyntenauntes in common make a leas of thei tenementes to another for terme of yeres, yeldyng unto them yearly a certayne rent, yf the rent be behynde, they shal haue one action of det against the lessee and not dyuers actions, bycause the action is in the personaltie.

## Tenauntes in common of chatelles.



It is to be knowe, that as there be tenauntes in comon of landes or tenementes: so there be tenauntes in comon of possessions and properties of chatelles as well real as psonal. Of real, as yf a leas be made of certayne landes to two men for terme of xx. yeres, & when they be therof possessed, the one graunteth that that unto him belongeth, durynge the terme, to another, here be to whom the graunt is made and the other shall holde and occupye in common.

Also yf two ioyntenauntes haue the ward of the bodie and of the landes of an heire wythin age, and the one of them graunteth to another that that unto hym belongeth of the same warde, then he to whome the  
E.i. graunt

## of Chatels.

graunt is made, and the other that graunteth not shall haue and holde it in common.

Of chatels parsonels, as yf two haue a ioynte estate eyther by gyft, or by byenge of an horse, or of an ore, or suche lyke, and the one of them graunteth that that to hym belongeth here shall the grauntee and he that graunted not, haue and possede such chatell parsonel in comon. And in such cases where dyuers parsons haue chatels reals or parsonels in common and by diuers tytles yf one of them dye, the other that suruiueth shall not haue hys felowes parte by the suruiuour, but the executors of hym that dyeth shall holde & occuppe it wryth hym that suruiueth in lyke fourme as they testatoure dyd or ought in his life, forasmuch as they tytles and ryghtes were seuerall.

Also in the case aforesayd, yf two haue estate in comon for terme of yeares, and the one doth occuppe all & put the other out of his possession & occupation: the shall he that is put out haue agaynst thother a wryte de Reuocacion firme for the halfe. In semblable maner where two holde the warde of lades or tenementes durynge the noneage of a chylde, yf one shall put out the other of his possession, he that is out shall haue a wryte

de



## Tenantes in comō. fo. xxxiiij

de Electtione custodie of the halfe, bycause these thynges be chatels reals, and maye be apporcioned and seuered. But no accion of trespase lyeth for the one agaynst the other (as for example Quare clausuz suum fregit et herbam suam conculcauit et consumpsit nor suche lyke accions) for as muche as eche of them maye entre and occupie in common. But yf two be possessed of chatels psonels in common by dyuers tytles, as of an horse, or an ore, or kowe, yf the one take it al to hym selfe out of the possession of the other, the other hath none other remedye, but to take it agayne fro hym that hath done hym the wronge, when he maye se hys tyme.

In lyke maner of chatels reals whych maye not be seuered, as in the case aforesayd, where two be possessioners of a ward of þ body of a childe within age, yf one shal take a chylde out of þ possession of the other, the other hath no remedye by any action at the lawe, but to take the chylde out of the others possession, when he seeth hys tyme.

Finally ye shall vnderstande that when a man in pleadyng & declaryng hys cause wyll shewe a dede of feoffement made vnto hym or a gyft in the taylor or a lease for terme of lyfe of any landes or tenementes, he

E. ij. shall

## Of chatels.

Shall vse bys termes in thys wyse and saye by force of whych feoffement, gyft, or leas, was sealed.

But where a man wyl declare or pleade a lease or a graunt made vnto hym of a chateall real or parsonall, there he shall saye by force of whych he was possessed.

**O**f partition to be made by ioyntenauntes and tenauntes in common, enacted.

Anno. cxxi. Hen  
rici. vij.

**A** Ioyntenauntes & tenauntes in comon of any estate of inheritauce in theyr owne ryghtes or in the ryght of theyr wyues of any lades or hereditamētes whin this realme of Englande, wales, or the marches of þe same, shal & maye be cōpelled to make partition betwene them of þe same which they so holde as ioyntenauntes or tenantes in comon by wyte de p̄cipatiōe facienda to be deuised in þe chauncery in like maner as coperceners are compelled to do, and the same wyte to be pursued at the comon law. And after such p̄titiō made euery of þe sayd ioyntenauntes & tenauntes in comon, shall  
and



**O**f partitiō by ioyntenātes. fo. xxxv  
& may haue ayde of þ other oꝝ of theyꝝ hey-  
res, to thintent to deueigne þ warrantie par  
amount & to recouer for the rate as is vsed  
betwene coperceners after partition made  
by the order of the common lawe.

**I**tem in the. xxxij. yere of kyng Henry the  
viij. it is further enacted that al ioyntenā-  
tes & tenantes in cōmon which holde ioynt-  
lye oꝝ in cōmon for terme of life, yere oꝝ yea-  
res, oꝝ ioyntenantes oꝝ tenantes in cōmon  
where one oꝝ some of them haue estate for  
terme of lyfe oꝝ yeres with other that haue  
estate of inheritaunce oꝝ free holde in any lā-  
des oꝝ other hereditamentes:shalbe compel-  
lable by wytt of partition to be pursued out  
of the chauncery vpon theyꝝ cases, to make  
seueraunce & partition of al such lādes & he-  
reditamentes as they holde ioyntly oꝝ in cō-  
mon for terme of lyfe oꝝ lyues, yere oꝝ yeres  
where one oꝝ some of them holde ioyntly oꝝ  
in cōmon for terme of lyfe oꝝ yeres w other  
that haue an estate of enheritaunce oꝝ free  
holde. Pꝛouided, that no such partition nor  
seueraunce, be hurtfull to any person other  
then such as be parties vnto the sayd parti-  
tion theyꝝ executours oꝝ assignes.

**O**f conditions.

E. iij.

fo:

## Of conditions.

**I**F so muche as euery estate is eyther pure, or condicionall, it were not amysse to make some declaration of the nature and efficacye of conditiōs. Wherfore ye shall vnderstande that of conditions, some be actuall conditions, and be called expresse conditions or conditions in dede, and other some be conditions in lawe whych be called also in latyne, *Conditio- nes tacite*, siue cōditiones implicite, bicause they be secretlye implied by the lawe and not expresse.

Conditions in dede be suche as be knyght and annexed by expresse wordes to the feoffement lees or graunt, eyther in wytyng or wythout, as for example yf I infeoffe a man in certayne landes reseruyng to me & to my heires so much rent yerely to be paid at suche a feast, and for defaute of paiment, that it shalbe lawfull for me to reentre, this is a feoffement vpon condition of payment. And here the not payment of the rente shall dissolue & utterly defete the feoffement. Seably it is of gyftes in tayle, leases. &c.

But yf the condition be, that for defaute of payment of the rent, it shalbe lawfull for the feoffour to entre againe into the landes and to holde them tyll he be contented and satisfied



**Of conditions. fol. xxxvi.**

Satisfyed of the rent, this condition not performed doth not dysolue nor vndo the feoffement, but onely gyueth to the feoffour an authoritie to retayne the landes (as it were by waye of distress) tyll he hath leuyed the arerages of the rent. And ye shall well marke and obserue, that conditions be somtyme made to be performed on the feffees behalfe, and sometyme on the feoffours behalfe. On the feoffees behalfe, as whē I infeoffe you of landes or tenementes vpon condition þ ye shal do suche an acte, as to paye vnto me or to myne heires such annual rent.

On the feoffours behalfe, as when I make a feoffement vnto you vpon condition that yf I paye or cause to be payd vnto you before suche a daye such a summe of money, then it shalbe lawfull for me to entre againe & retayne my lādes in my former estate. In thys case ye that be the feffee, are called tenants in mortgage, which is as much to saye as a dede gage, and it seemeth that the cause why it is so called, is for as much as it is doubtfull whether the feoffour wyl pay at the daye lymytted & prescribed such summe of money for the redemption of hys landes or no, for yf he do not, his tytle or intreste in the landes thus gaged and oppignozated

E. iii. is vt

## Of conditions.

is vtterly extinct and gone without al hope of renuyng.

Ye shal also note, that yf þ moꝛgageoure dyeth before the of day payment, hys heyre maye redeme the lāde very wel, euē as well as hys auncestoure that moꝛgaged the lāde myght haue done, although there be no mēcion made of heyres in the wꝛytinge.

And yf when the money is lawfullye by the moꝛgageour or hys heyre tendred & proffered, & the feoffee refuseth to receyue þ same the feoffour or hys heyre may entre, & then hath the feoffee no remedy for his money at the common lawe.

Ye shall vnderstande also, that some conditions be vtterly voyde in the lawe, and of none efficacy vertue or strength, as yf a feoffement be made of landes in fee simple vpon condition, that the feoffee shall not alien or put awaye the same to none other, thys condition I saye is voyde, bycause the feoffee is restrayned of his hole power that the lawe gyueth in suche case vnto hym, and whiche power and lybertie, is in maner included in euery feoffement. Yet I maye abydge hym of parte of hys power, as to condition wꝛth hym that he shall not alien the landes to suche a personne or suche. But of gyftes



## Of conditions. Fol. xxxvii.

giftes in taylor otherwise it is, for yf I giue landes to a mā & to hys heires of his body lawfully begotten vppon condition that he nor hys heires shall aliene the landes to none other persone, this condition is good and effectuell in the lawe, and yf he or his heires contrarie to the condicion do aliene them, then the gyuer or hys heires may be ry well entre & retayne the landes for ever, bycause thys cōdition doth stande with the forenamed statute of Westminster seconde whych prohibiteth suche alienacions to be made.

Hythervnto I haue spoken of condition in dede, now wyll I shew what be cōdition in lawe that be annexed to any estates.

Knowe ye therfore, that yf the office of a parker, or steward, or suche lyke offyce be graunted to a man for terme of hys lyfe, though there be no condition at al mēcioned in the graunt, yet the lawe speaketh a condition in this case, whych is that yf the partie to whome suche offyce is gyuen shal not exerceute all poyntes apperteynyng vnto his offyce accordyngly, it shalbe lawfull for the grauntour to entre and dyscharge hym of hys offyce and thys condition is called a cōdition in lawe.

An

## Of conditions.

**I**n acte how straungers shall take auantage of conditions made. an. xxxij.

Henri. viij.

**I**t is enacted that aswell all parsones whiche haue or shall haue any gyfte or graunt of the Kyng by his letters patentes of any landes, personages, tytles or other hereditamentes or of any reuerſion of the ſame whiche dyd belonge to any monaſtery or other eccleſiaſticall houſe diſſolued or otherwyſe come into the Kynges handes ſythens the fourth daye of Februarye in the. xxvij. yere of our ſoueraigne orde Kyng Henrye the eyght, or whiche at any tyme heretefore dyd belonge to any other parſone and after came to the Kinges handes, as alſo all other pſones beyng grauntes or aſſygned to the kyng or to any other perſone, theiꝝ heires executors ſucceſſours and aſſygned, ſhall haue lyke auantage agaynſt the fermours theiꝝ executors adminiſtratours and aſſygned by entry for not payment of the rent, or for doyng of waſte or other forſayture, and alſo ſhall haue the ſame auantage by action onely for not perfourmyng of other conditions couenautes or agrementes conteyned in ſ indentures of theiꝝ



## Of conditions. fol. xxxviii.

they: leases or graūtes against the said fermours & graūtees they: executours administrators and assignes, as the said lessors or graūtors thē selves myght haue had at any tyme. And againe mutually and on thother syde, þ said fermours & graūtees for terme of yeres, lyfe, or lyues they: executours administrators & assignes shal haue lyke auantage against thē for any cōditiō couenaunt or agrement conteyned in the said indentures, as they might haue had against they: said lessors & graūtors they: heires & successours al benefytes & auantages of recoueries in value by reason of any warrāty in dede or in law by voucher or other wyse only excepted

Þrouided that this acte shal not extende to charge eny person for brech of any couenaunt or cōdition cōpyled in any such wrytyng, but for such as shalbe broken and not performed after the fyrst daye of Septēber in the. xxxij. yere of this kinge & not before.

### Wyner of season, and atturnement.

**I**n all feoffementes, gyftes in taylor  
leases for terme of lyfe, or for terme  
of an others lyfe of landes or tenementes

## **Lyuery of season,**

mentes, there can be no alteration or transmutation of possession by the aunciente lawes of thys realme, onelesse there be a certayne ceremony adhibited and solempnised in the p[re]sence and syght of neyghbours or others, whych ceremony is called liuerie of season.

And ye shal vnderstāde that this ceremonye of lyuerie of season is done, when the feffour, donour, lessour or theyr deputie come w[ith] the neyghbours solemply to the landes or tenementes, and there put the feoffee donee or lessee in possession of the said landes or tenementes by deliuering vnto him a clod of earth, or p[ar]t of a doze, or some other thyng in the name of season, and for thys selfe cause this ceremony of lawe is called lyuery of season, that is to wyt a tradition or gpyng of season.

But this ceremony is not requyred in leases for terme of yeares, or in lessees at wyl for asmoche as the lessour in suche case remaineth styl leased, and the lessee hath only the possession wythout the leasin, & therefore the termes of the lawe be, that such a man is possessed, where as in feoffementes, gyftes in taylor, and leases for lyfe, he is called leased.

**Wherefore**



Wherefore yf a feffement or leas for lyfe be made of landes or tenementes and before that the lyuery of scasine be made & feffour dyeth, the heyre of the feffour shal haue the landes. Per summum ius, that is to say by the rygoure of the lawe, notwithstanding that the feffee hath payde to the feffour the price of the lande, & although the feffee be in possession. But otherwyle it is of a leas for terme of yeares.

A lyke ceremoupe is vled, when rente charges, rente seruyces, & suche other thynges as passe by waye of graunt, be graunted for it is no full and parfyte graunt, tyl it be consignate and sealed as it were wyth the ceremoupe of attournement.

Thys attournement is nothyng eyles, but when the tennaunt of the lande of which the reuerfion is graunted, or out of whych a rente is graunted, do make some euident significacion and token that he accepteth & person to whome the graunt is made to be in the same respecte vnto hym that & grauntour was. As for an example, yf the tennaunt of the lāde after he haue herde of the graunt cometh to the grauntee, that is to wyte, to the persone to whome the graunte was made, & saye in thys wyle, or in lyke effect.

I agree

## Lyvery of lease,

I agree me to the graunt made vnto you by suche a man, or I am well apayde and contented of the graunt that suche a man hath made vnto you. But the mosse vsuall and frequent forme of atturment is to saye: Syr I atturme vnto you by force of the said graunt, or I become your tenaunt, or to deliuer vnto the grauntee a peny or a halfe peny by waye of atturment.

Yf a man maketh fyrst one graunt to one persone, and after an other to an other persone, that graunt shal stande to whiche the tenaunte wyll atturme, althoughe it be the latter graunt.

And ye shall note, that yf a mā be leased of a Manour whych is parcel in demesne, & parcell in seruike, and doth aliene the same Manour to an other, onlesse the tenautes of the Manour do atturme, the seruices shal not passe, only tenautes at wyll excepted, for it nedethe not to cause them to atturme.

Note furthermore that there is a greate difference bytweene gyuinge a peny in name of leasin, and gyuinge it by waye of atturment, for whan it is gyuen of the tenaunt to that grauntee in name of leasin, it dothe not only implie an atturment, but also it gyueth



## and atturment. fol. xl.

gyueth hym suche a leasin, that yf the rente afterwarde be behynde and not payde, he maye now vpon the leasin of the peny, after a lawfull distres and after rescus made, brynge an Aūse of nouel distresin, where as yf it were gyuen only by way of atturment he coulde not brynge the Aūse, but hys wyrt of rescus onely.

Also ye shall vnderstande, that wher landes be deuisable by testamente by the custome of any auncient boroughe or citty, yf there the reuersyon of any landes be by testament bequethed to a mā in fee, and the testatour whiche we call the dyuyfour dyeth the deuysee, that is to wytte, he to whome the deuyse was made hath forth wyth the reuersyon in hym wythout further ceremonye of atturment. Lykewyse it is yf a man by testament dothe bequethe a rent charge that he is leased of, or a rent seruyce, there nedethe none atturment at all.

Yf two ioyntenauntes be of land and the lorde graunteth the seruyces to an other, yf one of the ioyntenauntes attourneth it is ynough. Finally if a lease be made for term of lyfe, the remayndre to an other in taylor the remayndre ouer to the ryght heyres of the

## Lyvery of season,

the tenaunt for terme of lyfe, yf in this case the tenaunt for terme of lyfe wyll graunte his remainder in fee to an other by his dede thys remaindre passeth forth wyth without any atturment, for yf any atturment were requisite, it shulde be made of the tenaunt for terme of lyfe, whych in thys case is the grauntour hym selfe. And in bayne it is that the grauntour shulde be inforced to attur, syth an atturment is adhibited & had to none other purpose, then to haue the consent and agrement of the particular tenaunt, to the iustent that it may appere, that he hath notyce and knowlege of this graunt, but here where as the particular tenaunte hym selfe is the grauntour, an atturment were superfluous, and more then neded.

## Of seruices.



Ythetunto I haue brefely touched and ouerrunne the sundrye kyndes and formes of estates. Nowe forasmuche as there is no tenure but hath vnto it some seruice knyt & annexed, it were verye necessarye to declare, howe



Of seruices. fo. xli.

howe many kyndes of seruices there be and what seruice is due to euerie tenure. For the knowlege herofye shall vnderstande, that the principall and most comon kynde of seruice that the tennaunte oweth to hys lord, is called knyghtes seruice.

Knyghtes seruice.

**K**nyghtes seruice includeth homage, fealtye and for mooste parte escuage, and whosoever holdeth hys lādes by knyghtes seruyce, is bounde by the lawe of thys realme to do vnto his lord homage and fealtie, and to paye for mooste part escuage, when it shall be assessed by authoritie of parliament, as hereafter more playnly shall be declared.

Homage is the mooste humble and reuerent seruice that a man of free state and condition can do, for when the tennaunt shall do homage to hys lord, the lord shall syt and the tennaunt shall knele before him vpon both knees, holdynge hys handes betwene hys lordes handes, and saye in this wyse, I become your man from thys daye forthwarde of lyfe and of membre & of earthly honoure and to you shall be faythfull and trewe,

If. i.

and

## Knnyghtes seruiſe.

and ſayth to you ſhall beare for the landes that I clayme to holde of you, ſaynge the ſayth that I beare vnto oure ſoueraigne lord the kyng., and then the lord ſo ſyttinge ſhall kysſe hym. But yf an eccleſiaſtical perſone whych by hys ordre and profeſſion hath addicted hym ſelfe to the ſeruiſe of God in eſpecial, ſhall do homage to his lord he ſhal ſay: I do to you homage, & ſhal be to you faythful and true, & ſayth to you ſhal beare for the tenementes that I holde of you, ſaynge the ſayth whych I owe to our ſoueraigne lord the kyng.

Alſo when a woman not married doeth homage to her lord, ſhe ſhal not ſay: I become youre woman, for it is not conuenient that a woman ſhulde be the woman of any other then of her huſbande that ſhe ſhal marrye, but ſhe ſhal ſay even as the eccleſiaſtical perſon ſayth: I do vnto you homage, &c.

And yf perchaunce a man holdeth ſundrye landes and tenementes of ſundrye lordes, and euery of them by knyghtes ſeruiſe, then in the ende of his homage makynge, he ſhall ſay, ſaynge the ſayth that I owe to oure ſoueraigne lord the kyng, and to myne other lordes.

And none is bolide to do homage to the lord,



## Knyghtes seruice. Fo. xlii.

lorde, onles it be suche a tenaunt as hath in the tenauncye an estate of fee simple, or fee tayle, eyther in hys owne ryght, or in the ryght of an other.

For yf a woman haue landes or tene-  
mentes in fee simple or fee tayle, whych she  
holdeth of her lorde by knyghtes seruice, &  
taketh an husbande and haue issue, in thys  
case the husbande in the lyfe of his wyfe  
shal do the homage, bycause he hath a tytyle  
to haue the landes by the curtesye of Eng-  
lande yf he ouerlyueth her, and also he hol-  
deth them now in hys wyues ryght, yet be  
fore issue hadde betwene them, the homage  
shall be made in theyr both names. But  
yf the woman dyeth before anye homage  
made by her husbande in her lyfe, & the hus-  
bande kepeth styll the landes as tenaunt by  
curtesye, now he shall not do homage to his  
lorde bycause he hath now an estate but for  
terme of lyfe.

Ffealtie is as muche to say as a fidelitie  
or faythfulnes, in doyng wherof the te-  
naunte shall holde hys hande vpon a boke,  
and saye thus: Heare you thys my lorde, I  
to you shall be faythful and true, and sayth  
to you shall beare for the landes and te-  
nementes whych I clayme to holde of  
F.ii. you

## Knyghtes seruice.

you, and duelye shall do you the customes & seruices whych I owe to do you at the termes assigned, as me helpe the God and hys sayntes. And then he shall kysse the booke, but he shall not knele as he that doeth homage.

And ye shall obserue, that homage can not be done but to the lord hym selfe, whete as the steward of the lordes court or þ baylyfe maye take fealtye for the lord. Also tenant for terme of lyfe shall do fealtye, but homage (as I sayd) he can not do.

Nowe as concernynge escuage, that is to saye, the scrupce of the shylde ye shall vnderstande, that he that holdeth hys landes by escuage, whē the kynge maketh a viage royall into Scotlande for the subduynge of the Scottes, is bounde to be wyth the kynges maiestie by the space of .xl. dayes wel & conueniently arayed and appointed for the warre. And he that holdeth hys lāde but by the moytie of the fee of knyghtes seruice, is boude by the force of his tenure to be wyth the kynge by the space of .xx. dayes, and so proportionably accordynge to the rate and quantitie of hys tenure.

But nowe to our institute and purpose, after thys viage royall into Scotlande (in  
which



## **Knyghtes seruice. Fo. xliii.**

whych the kynge goeth in persone) & after the retyre into Englande agayne, a parliamente is wonte to be commoned, in whych shalbe prescribed and assayed what euery persone that helde hys land by homage and wente not wyth the kynge neyther by hym selfe, nor by hys deputye, shal paye to his lord in satisfaction of hys not seruyng, & accordyng to the taxation hereof, euery tenaunte shal paye to hys immediate lord, whether it be the kynge or other after the rate and porcion of his tenure yf he holdeth by an hoole fee, he shal paye the hoole escuage, yf by a moytie, the halfe, yf by  $\frac{1}{4}$  fourth parte of a fee, the fourth parte. &c. and this money thus assayed, is called scutage or escuage, for whych the lord to whom it is due, maye verye well for the non payment therof dystreyn.

But here it is to be noted, that some tenautes by custome vsed tyme out of minde are bounde to paye but the moytie, or the thyrde parte of that whych shalbe assayed and lymytted by acte of parliament.

Yea, and the custome is in some place, that to what summe of money so ever escuage is assayed, the tenautes shal paye neuer but suche a certayne summe of moneye,

**f. iiij.**

and

## Of warde mariage

and thys kynde of escuage is called escuage certayne, where as the other is called escuage vncertayne.

Finally ye shall vnderstande, that escuage vncertayne is alwayes adiuged to be knyghtes seruice, & draweth vnto it warde, mariage, and reliefe, but escuage certayne is no knyghtes seruyce but is of the tenure of socage as shalbe herafter more amplye shewed.

## Of warde mariage and reliefe.



Every knyghtes seruice draweth vnto it, warde, mariage, & reliefe. Wherfore it is nowc tyght expediēt somewhat to en treate of them. Ye shal therefore be admonished, that when the tenaūt which holdeth hys lāde by knyghtes seruice dyeth his heyre male beyng at þ tyme within the age of .xxi. yeres, the lorde shal haue þ ward that is to saye, the custodie or kepyng of the landes so holdē of hym to his owne vse and profyte, tyll the heyre cōmeth to the ful age of .xxi. yeares. For the lawe here presumeth that tyll he come to thys age, he is not able



able to do suche service, as is of this tenure requyred. Furthermore yf suche heyre be unmarried at the tyme of the death of the tenant, then the lord shall haue also the warde and the bestowynge of the mariage of hym.

But yf tenant by knyghtes service dyeth, his heyre female beyng of the age of xiiij. yeres or aboue, then the lord shall haue the warde neyther of the lande ne yet of the bodie of suche an heyre, and the reason hereof is because a woman of that age maye haue a husbände able to do knyghtes scrvice, that is to saye, to wayte vpon the kynges maiesties person when he auauentureth into Scotland with his armye royall.

But yf suche an heyre female be within the age of xiiij. yeres and not married at the tyme of the death of her ancestor, then the lord shall haue the warde of the lande holden of hym tyll suche heyre female cometh to the age of xvi. yeres, by force of an acte of parliamente in the statute of Westminster the fyrste.

Note that there is a great dyuersitie in the lawe betwene the ages of females and of males, for the female hath these marriage ages appointed by the lawe. First, at  
F. iij. v.

## Of warde mariage

viij. yeares of age the lord her father maye distrayne hys tenautes for ayde to marre her. Seconde at .ix. yeares of age, she is dowable. Thyrde, at .xij. yeares she is able to assent to matrimonye. Fourthly, at .xiiij. yeares she is able to haue her lande, and shalbe out of ward yf she be of this age at the death of her auncestoure.

Fyfthly, at .xvi. yeares she shalbe out of ward, though at the death of her auncestour she was wythin the age of .xiiij. yeares.

Sixtly, at .xxi. yeres she is able to make alienations of her lādes or tenementes. Where as the man hath but two ages, the one at .xiiij. yeares to haue hys landes holden in so cage, and to assent to matrimonye, the other at .xxi. to make alienations.

Ye shall vnderstande that by the statute of Merton, the syxte chapiter, it is enacted that yf in case the lordes do marre theyr warde to byllaynes or others, where is a dispargemēt, yf suche heyre so marred be wyth in the age of .xiiij. yeares or of such age that the sayde warde canne not consente to the mariage, then yf the frendes of thys heyre complayne and fele them selues greued wyth thys vnmete mariage, the nexte of kynne to the heyre, vnto whom the heritage



## Of warde mariage. fol. xlv.

heritage can not descende, may entre into  $\phi$  landes, and put out the lord whych is gardedyne in chynalrye, and yf the next kyneman wyll not thus do, an other kyneman of the infauute maye do it, and shal take the issues and profytes to the behoofe & vse of the heyre, and shal yelde accomptes thereof vnto hym when he commeth to hys full age.

Also there be dyuerse other dyspargementes, whiche be not expessed in the said statute, as yf the heyre beynge wythin age of consente, and in warde, be maryed to a decrepite persone or creple, as to one that hath but one fote or one hande, or that is a dyfforme creature, or haupnge anye horrible disease or continuall infirmitie. All these and suche lyke be dyspargementes. But here also ye shall vnderstande, that it shall be sayd no dyspargement, onlesse the heyre be so maryed when he is within the age of discretion, that is to saye, wythin the age of xiiij. yeres. For yf he be of that age or aboue & consenteth to such mariage, it is no dyspargement, neyther shall the Lorde for suche mariage lose hys warde, bycause it shal be reputed and assigned to the folpe of  $\phi$  heyre beynge of age of dyscretion, to consent to  
suche

## Of warde mariage,

suche mariage.

Now, yf the lord, thus being gardeyne offer to the heyre being in his warde a convenient mariage wythout disparagement, & the heire refuseth it, as he may at his choise and election very wel do, then the lord shall haue the value of the mariage of such heyre when he commeth to his full age. But yet yf he marre hym selfe being so in warde agaynste the wyll of hys gardeyne, than he shall paye the double value by force of a statute of Merton before remembred.

And ye shal note that yf landes holden by knyghtes seruyce descende to an infant or chylde within age fro his mother or from any of his auncestours, his father being yet alive, in this case the lord shall not haue a mariage of this heyre, for durynge the lyfe of the father, the sonne shall be in warde to no man.

Finally, it is to be knowen, that he which is gardeyne in chivalrye in ryght, may after he hath leased the warde, graunte the same eyther by dede or wythout dede to an other man & then he to whome such graunt is made is called gardeyne in fayte.

Now as touchyng reliefe, ye shal knowe that yf a man holdeth his lande by knyghtes service



seruyce and dyeth hys heyre beyng of full age (the full age of the male is. xxi. yeares, of the female. xiiii.) then the lord of whome the lande is holden shal haue of the heyre reliefe.

Reliefe of a hole knyghtes fee is. l. s. of halfe a knyghtes fee fyfthe. s.

Also a man may holde landes of a lord by two knyghtes fees, and then the heyre beyng of full age at the death of his ancestor, shal paye to hys lord for reliefe ten poundes.

**S**eruiice of castell garder.



W<sup>e</sup> shall vnderstande that a man maye holde by knyghtes seruiice & yet not holde by escuage, nor shall paye no escuage, for he maye holde by castell garder, that is to saye, by seruiice to kepe a tower of hys lordes castel, or some other place, vpon a reasonable warnynge, when hys lord heareth that enemyes wyl come or be already come into Englande.

This seruyce is also knyghtes seruiice, and draweth to it warde, maryage, and reliefe, as the common knyghtes seruiice doeth.

Of grande  
Of grande ser-  
geauntie.

**T**here is also an other kynde of knyghtes seruice, called grande sergeauntie, whych is where a man holdeth hys landes or tenementes of the kynge by suche seruice as he oweth in proper persone to do, as to beare the baner of our soueraigne Lord the kynge, or hys spere, or to conducte his hoste, or to be his marshal, or to be þe sewer, caruer, or butler at the feast of the coronation, or to be one of the chamberlaynes of the receypt of hys eschequer, or to do lyke seruices to þe kynge in proper persone, suche maner of seruice I saye, is called grande sergeantie, that is to saye a greate or hygh seruice, and the cause why it is so called, is bycause it is the most honorable and moste worthye seruyce that is, for he that holdeth by escuage is not appointed by hys tenure to do any other more specyall seruice then an other is bofide that holdeth by escuage, but he that holdeth by grande sergeantye, is bofide to do some speciall seruice to the kynge.

Also yf he that holdeth of the kynge by  
grande



**sergeantie. Ro. xlvii.**

grande sergeauntie dyeth, hys heyre beyng of full age, then the heyre shall paye to the kynge for relyefe, not only a. l. s. as he that holdeth by escuage shall do, but moreouer the cleere yerely value of those lādes and tenementes which he so holdeth of the kynge by grande sergeantye.

Furthermore ye shal obserue that in the marches of Scotlande some men holde of the kynge by cornage, that is to saye, by blowyng of an horne to the intent to warne the men of the cōtrei when they heare that the Scottes or other theyr enemyes be comyng, or be alreadye entred into Englade whycher seruyce is also a kynde of grand sergeantye.

Grande sergeantie therfore is as much to saye in Latyn, as *Magnum seruitium*, that is to saye, a greate or hyghe seruyce, lyke as petyte sergeauntie is called *Paruum seruitium*, that is to saye, a lytle or smal seruyce.

But to reuerte agayne to the matter ye shall note yf any tenaunte holder of any other lorde thē of the kynge by such seruyce of cornage, then it is no grande sergeantye but yet neuertheles it is knyghtes seruyce, & draweth to it ward mariage and reliefe,  
for

## **Petite sergeantie.**

for thys is a rule infallible that none can holde by grande sergeantie but of the kynges owne maicstie.

Finally ye shal vnderstande, that al they whiche holde of the kyng by thys seruyce called graunde sergeauntie do holde of the kyng by knyghtes seruyce, and by vertue of thys tenure the kyng shal haue of them warde mariage and reliefe, but escuage yet he shal not haue of them oneles they holde by escuage of hym by expresse and specyall wordes.

## **Petite sergeantie.**



**T**ernaunte by petite sergeantie is he that holdeth his lāde immediatly of oure soueraygne lord the kyng by this maner of seruice, to pay to the kyng yearly eyther a bowe, a spere a dagger, a swerde, a payre of gantlettes, a payre of spores of golde, a harte or such othet smale thynges apperteynyng to the warre, and thys seruyce is in effecte but sorage, bycause that suche a ternaunte is not bounde by hys tenure to go ne do any thyng in hys owne proper person touchyng the warre,



## Homage aūcestrel. fo. xlviii.

warre, but only to rendre and pay yerely certayne thynges to the kynge, as a man ought to pay a rente. Wherfore this seruice of peytie sergeantye is no knyghtes seruyce, but yet ye shall note, that a man can not holde neyther by petire sergeauntye, neyther by graund sergeantye, but of the kynge ouely.

## Homage aūcestrell.

**T**enaunt by homage aūcestrell is he whych holdeth his lande of his lord by homage, and bothe he & his aūcestours whose heyre he is haue holden the same lande of the sayde Lorde and of his aūcestours tyme oute of mynde by homage, and haue done vnto them homage, and this is called homage aūcestrell, by reason of the longe continuance whiche hath bene by title of prescription as well concernyng the tenauncye in the bloude of the tenaunte, as concernyng the lordeshipp in the bloude of the Lorde. And this seruice of homage aūcestrell drawethe vnto it warrantye (that is to saye) yf the lord whiche is now in lyfe hath once receyued the homage of his tenaūt, he oughte to warrant the same tenaunte, what tyme  
so

## Homage auncestrell.

So euer he shall be impleaded or sued for  
such lande so holdē of hym by homage aun-  
cestrell.

Moreouer suche seruice of homage aun-  
cestrell dyaweth to it acquittall (that is to  
saye) the lordē ought to acquyte the tenaunt  
agaynst all other Lordes that can demaunde  
any maner of seruice out of the tenauncye.

Wherfore yf in thys case the tenaunte  
whych he holdethe by homage auncestrell be  
impleaded of hys landes, and voucheth his  
Lorde to warrantye, who cometh in by pro-  
cesse and demaundeth of the tenaunte what  
he hath to bynde hym to the warrantie, and  
the tenaunt sheweth howe he and his aun-  
cestours, whose heire he is, haue holdē hys  
lande of hym and of hys auncestours tyme  
out of mynde, surely the lordē yf he can not  
denye thys, and yf he hath receyued the ho-  
mage of suche a tenaunte, is bounde by the  
lawe to warrant hys lande, so that yf  
the tenaunt lose hys lande in defaute of the  
Lorde thus vouched (that is to saye) called  
to warrantye, he shall recouer agaynst hym  
so muche in value of those landes and tene-  
mentes whych the lordē had at the tyme of  
callynge to warrantye or at any tyme after  
But yf the Lorde neuer receyued þ homage  
of thys



## Homage auncestrel. fo. xlii.

of hys ternaunt, then he may very wel whē he is thus vouched disclaime in the lordshipp or seignorie, and so put out the ternaunte of hys warrantie. Where ye shall note, that in euery case where the lorde disclayme in his seignorie in courte of recorde, hys seignorie or lordshyppe is extincte, and the ternaunt shall holde from thensforth of the next lord to hym that thus disclaymed.

Thus ye perceyue that homage auncestrell is not but where as is a longe continuance, as well in the bloude of the ternaunt in respecte of hys ternauncye, as in y<sup>e</sup> bloude of the lorde in respecte of hys seignorie. Wherefore yf the ternaunt doth ones aliene hys landes to another, althoughe he purchase the same agayne, yet he shall not holde any longer by homage auncestrell bycause of thys dyscontinuaunce, but shall holde it now by the vulgate & accustomed homage.

## Of Lyneries.

**W**hen one dyeth which helde of y<sup>e</sup> kyng by knyghtes seruite in capite, that is to say in chiefe, his heyre beyng with in age, y<sup>e</sup> kinge (as is before declared) shall haue the warde and custodye aswel of  
B.i. the

## Of lpuerpes.

the landes as of the body that is to wyt the  
marriage yf he be vnmarrjed. But yf þ heyre  
be of ful age at the tyme of the death of such  
aunccestour, yet shall the kinge by hys prerogative  
royall haue primer seysin of all the  
landes tenementes and other hereditamentes  
wherof suche hys ternaunte was seysed  
in hys demeaunc as of fee. And yf suche an  
heyre woll entre into hys landes when he  
commeth to his ful age before he suc hys lpuerpe  
and receyue seysin by the kyng, no feoffment  
shall accrete nor growe vnto hym, but  
he shall be demed an intruder in the kynges  
possession. Yea and yf he dye so seysed in the  
meane tyme, hys wyfe shall haue no dowre  
of suche landes. Wherfore it behoueth in any  
wyse that suche heyre as well male as female  
commynge to full age before he or she  
entre into theyr landes to sue lpuerpe. The  
maner and forme wherof accordynge to the  
acte of parliamente lately promulgated and  
set forth, I intende bryefly to recyte.

Howe heyres ought to sue theyr  
lpuerpes, inacted. xxxiii.  
Henrici. viii.





**M** parsones or parsones hauinge landes or tenementes aboue the yearly value of. v. li. shall haue any lyuerye before inquisition or offyce founde before theschetour or other commissioner by vertue of the kynges wyrt or commission directed out of the chauncerie or other courttes hauyng authoritie to make suche wyrttes or commissions, whych shall not passe out of the same but by warrant or byll assigned and subscribed by the mayster of the wardes and lyueries, the surueyour, atturney and receyuer of the sayd court or. iij. or one of them, to be directed and deliuered to the chaunceller of Englande, or to any other chaunceller or officer hauyng power to award such wyrttes. And for the wyrtynge and sealynge of the same shalbe payd the accustomed fees. But yf the lades exceede not the sayd yearly value of. v. li. then they shall paye for the seale of eury suche wyrt or commission. vi. d. and for the wyrtynge fyve pens, and not aboue.

And the inquisitions and offyces here vpon founde shalbe returned by the sayd exchetours or commissioners into the same court from whence the wyrt or commission

B. ij. was

## Of lyueries.

was awarded, whiche done, the clerkes of the petty bagge shal receyue the same offices and make a transcripte therof to the sayde Mayster of the wardes and lyueries. And then the sayd maister and the surueyout attorney and general receyuoure, or .iij. of the wherof the mayster or surueyout to be one, shal couenaunte and indente wpth such persones for theyr lyuerie of the castelles, manours, lordshyps, landes, tenementes and hereditamentes compysed or not compysed in suche offices, and shal make and set the rate and pryce for the same, and appoynte the dayes of paymente therof by obligation to be taken for the same to the kynge.

And euery byl for any special or generall lyuerie assigned by the handes of the sayd mayster, surueyout, attorney, receyuoure or .iij. of them, wherof the maister or surueyout to be one, shal be warrant sufficient to þe lord Chancellor or other officer hauynge power to passe lyueries vnder any of the kynges scales accordyngly. In whych case the clerkes of the petty bagge or other clerkes by whome the lyueries be wyrtte shal receiue aswel for them selues as for others suche fees as hath bene accustomed.

Item



Item every person may sue at his pleasure a general lyuerie for any manours, lands, tenementes, rentes, reuerfions, remainders or other hereditamentes wherof the clere yearly value shal not exceede .xx. li. Provided that an offyce be therof founde and a warrant fyrst obtayned of the sayd maister and others as is aforesayd.

And where suche general lyuerie is taken, yf the landes exceede the yearly value of .v. ponde they shal paye for the scale .xx. s. iiii. d. and al other fees accustomed. But yf they exceede not the yearly value of .v. li. they shal paye but these fees folowynge, that is to saye, for the scale of the lyuerie xij. d. To the clerkes of the petty bagge for the wytyng and encollynge .xx. d. For the resppte of homage in the Banapatreight pens. To the lord great Chamberlayne twentye pens. To the maister of the Rolles .xx. d. And to the clerke of the lyueries for the warrant and encollynge of the lyuerie .xx. d.

Item no persone or persones shal paye in theschequer or any other courtes for the resppte of homage for any landes or hereditamentes not exceedynge the yearly value of .v. ponde, aboue syght pens. And for

## Of lyueries.

the entrynge therof and warrant of attornei above.iiii.ð.

And the value of suche landes and hereditamentes not exceedynge the yearly value of.xx.li.shalbe taken as it is limited in the offices founden therof,excepte by the examination and certificat of the sayd maister, surueyore, attourneye and receyuoure or thre of them,it shal otherwyle appeare and be declared in any of the kynges courtes.

Also no Eschetor shal fynde onelye by vertue of hys offyce for inquire of the tenure tittle or value of any landes or other hereditamentes holden of the kyng beynge of the yearlye value of.v.li. or above without the kynges wyte to hym dyrected vpon payne to forfayt.v.li. for euery tyme he shal so do. Neyther shal he take for the fyndynge of any office of landes not exceedinge the yearly value of.v.li.aboue. xv. s. that is to saye,vi. s.viii. for hys owne fee. And.iii. s.iiii.ð. for wytyng of thoffice. And for the charges of the iuryc.iii. s. And for the offycers that shal receyue thoffice in any court of record.ii. s.vpon paine that the eschetour doyng otherwyle shal for euery tyme forfayt.v.li. And vpon lyke paine thofficers of euery court of record wher such inquisitions



inquisitions shalbe returned, beyng offered vnto them wythin one moneth nexte after the spydynge therof, shal receyue them. The one moitie of all whyche forsayntures to the kynge, and thother to the partie that woll sue for the same. &c.

And they whych hereafter shalbe in case to sue lyuerie whose landes and tenementes excede not the yearly value of .v. li. may lawfully sue forth theyr generall lyuerie by warrant had from the sayde courte as is aforesayd, although none other inquisition be therof had nor certifyed, payenge neuertheles the fees before remembred.

Finally every persone shal sue forth his patent for hys lyuerie wythin .iii. monethes next after þ assignemēt of his byl, or els his byl assigned to be voide and of none effecte.

Hytherto haue we brievely touched all kyndes of knyghtes seruyces, and thynges incident to the same. Nowe woll we wyth lyke brieftnes declare thother kyndes of seruyces, whych comonlye be comprysed vnder the general name of socage. For every lāde or tenement eyther it is holden by knyghtes seruice, or elles it is of socage tenure or at the leste waye of the nature of socage tenure, whych in effecte is all one.

**¶.iiii. Wherefore**

## Of Socage.

Wherfore fyrste we shall defyne what Socage is in the proper signification, whych done, we shall peruse the other kyndes of seruices whych be of the nature of Socage tenure.

## Of Socage.



Socage is properly, where the tenaunt is boude to come wyth hys soke (that is to saye) with hys ploughe to care and sowe parcell of the demene landes of hys lord, whych seruice in auncient tyme was very comon and frequent but now by the mutuall consente bothe of the lord and of the tenaunt it is conuerted for the moost part into a yearly rent. Now be it the name of socage abydeth styll. Wherfore now we at that is not knyghtes seruice is called by the name of socage.

So that yf a man holdeth by fealty onely, or by fealty and homage for all maner of seruyce, it is but socage tenure for homage alone maketh not knyghtes seruyce, yea yf a mā holdeth by cscuage certayne, as I haue sayd here tofore, he holdeth in effect but by socage.

Nowe where a man holdeth hys landes by



## Of Socage.

Fol. iiii.

by socage & dyeth, bys heyre beyngc within thage of .xiiij. yeares, the lord shal not haue the warde, but the next of kynde to þe heyre to whome the heritage can not descend shal haue the tutele and wardshipp as well of the lande as of the heyre, tyl the heyre come to the age of .xiiij. yeares, and such tutor or gardeyne is called gardeyne in socage, and shal redre accomptes to the heyre for the issues and profytes that he hath receyued of the landes durynge suche tyme, deductynge his resonable costes and expēses, so that he shal not haue the wardeshipp to his owne vse and profyte as the lord whiche is gardeyne in chynaltrie heath.

Finally ye shall vnderstande that when tenaunte in socage dyeth, the lord of whiche the lande is holde shal haue reliefe, that is to saye the value of the rente that is yearly due vnto hym of the tenauncye, besyde the yearly rente: so that in effecte after þe death of bys tenaunt he shal haue of the heyre .ii. rentes, saue that for the reliefe, he may dystreyn forthwyth, but for the accustomed rent he can not dystreyn tyl the vsual daye of paymēt be come.

¶ Francke almoyne.

Tenaunt

## Frankenalmosne.



Enaunte in franke almoyne,  
that is to saye in free almesse  
is where a byshop, deane, or  
any other ecclesiastical per-  
sone holdeth of hys Lorde in  
pure and perpetuall almes,  
and suche tenure began fyrste in olde tyme  
after thys maner. When a man was sealed  
in auncient tyme of certayne landes or tene-  
mentes in his demene as of fee, and of the  
same tenementes enfeoffed an abbot & hys  
couent or a priour & his couent, or any other  
persone ecclesiastical, as a deane of a colege  
mayster of an hospital, or such lyke to haue  
& to holde the same lades to them & to theyr  
successours for ever in pure and perpetuall  
almesse, or in francke almes, in these two ca-  
ses the tenementes shulde be holdē in frāke  
almoyne.

By force of which tenure they that hold  
in frāke almoine after this sort be boūde of  
right before god to make orisons & prayers  
to celebrate masses & to do other diuine ser-  
uices for the soules of theyr graunters & fef-  
fers & for þ soules of their heires which be  
dead & for þ psporous estate of theyr heires  
þ be now alyue. And bycause of ryght they  
be bounde to thys dyuine seruyce, they be  
dyschar-



**Frankelmoynne. Fo. liiii.**

discharged by the lawe to do any other prophane or corporal seruice, as fealtre or such other lyke.

But neuerthelesse yf such as holde theyr tenementes in frankelmoynne do omitt and leaue vndone these deuynne seruyces wherunto they be bounde before God, the Lorde can not distreyn them, ne yet compell them by any other meanes by the course of the common law, but the only remedy is to complaine of the to theyr ordinary, who of right ought to compel suche ecclesiastical persones to do the deuynne seruyce due as afore sayd.

But here ye shall note that yf a persone of a chyrche or any other ecclesiastical persone holdethe of hys Lorde by certayne diuine seruyce to be done, as to syng masse euerye frydaye in the weke, or placebo and dirige, or to fynde a preeft to syng masse or to distribute in almes. &c, pence to a hundred men at suche daye: in all these cases, yf such diuynne seruyce be vndone, the lorde may very well distrayne, bicause the seruyce is put here in certayne.

Nowe I sayde, yf in olde tyme a man dyd infeoffe such ecclesiastical persone after such sort, he shulde holde hys lande in franke almoynne, but at thys daye it is otherwyse,  
for

## Frankelmoynie.

for by the reason of a statute called, *Muta emptores terrarum*, no man can aliene ne graunt landes or tenementes in fee simple to holde of him selfe, so that now yf a man beyng seased of landes in fee simple graunteth the same by lycence to an ecclesiastical persone in frankelmoynie these wordes frankelmoynie be voyde, and the ecclesiastical persone shal holde them immediatly of the lord of þe feoffor by the same seruices that the feoffor helde, so that no man can holde in frankelmoynie, but by force of a graunte made before the sayd statute, onely the kynges maiestye excepted, for he is out of the compasse of the statute.

Finally, ye shal note that where as a man holdeth in frankelmoynie, hys lord is bounde by the lawe to acquyte hym of al maner of seruyce that anye other lord can haue or demaunde out of the sayd landes.

That yf he doeth not acquyte hym but suffre hym to be distrayned, then he shal haue agaynst hys lord a certayne wryt, called a wryt of meane, and shal recouer agaynst hym hys damages and costes of hys luyte.

**C** Of burgage.

**I** requere





Tenure in burgage, is where an ancient borough is, of which the kynge is lord, and they whych haue tenementes within the same borough holde the same of the kynge, payenge a certeyne yearly rent, whych tenure, in effect is but socage tenure. Lykewise it is, where as any other lord spiritual or tēporal is lord of suche borough.

Here ye shal note that for the most parte suche ancient burghes and townes haue dyvers customes and vsages whych other townes haue not. For some burghes haue a custome, that the yongest sonne shal inherite before the eldest, which custome is called commonly borough Englyshe.

Also in some burghes by the custome the woman shal haue for her dower all the landes and tenementes wherof her husbaude was seased at any tyme durynge the matrimonye and couetture.

Moreouer in some burghes a man maye bequethe and deuyle hys landes or tenementes by testamēt at the tyme of his death and by force of such deuyle or legacye, he to whome the bequeste was made, after the death of the testatour whych made such testament maye by force of thys ancient custome

## Of burgage.

Some entre in to the landes so to hym besquerhed or deuysed wythout any lyuery of season to hym made or further ceremonye of lawe.

Howbeit how and in what maner a man may at this day deuise his land by his laste wyll & testamēt by force of a certayne newe statute, it shalbe hereafter declareth.

Dyuers other customes in Englad there be contrarie to the coute of the common lawe, whych yf they be any thyng probable and maye stande wyth reason are good and effectuell, not wythstandynge they be agaynst the common lawe.

## Of villenage or bonde seruice.

**A**Tenant in villenage is properly when a villayne, that is to saye, a bondeman holdeth of hys lorde, whose bondman he is, certayne landes or tenementes, accordynge to the custome of the manoure or otherwise at the wyl of hys lorde, and to do hys lorde villayne seruice, as to beare and to carye the donge of hys lordes out of the cytie, or out of hys lordes manoure, and to laye it vppon the demeane landes of hys lorde, or to do suche  
lyke



## Of villenage. fol. lvi.

lyke seruyple and villayne seruyce. Now be it fre men in some places holde theyr tenementes and landes of theyr lordes by custome, by suche sorte of seruyce, and theyr tenure is called tenure in villenage, and yet they them selues be no villaynes ne of scruiile condition but fre men. For the land holden in villenage maketh not the ternaunt a villayne, but contrary wyse a villayne may make fre lande to be villayne lāde vnto his lord. As yf a villaine purchaseth lāde in fee simple or in fee tayle, the lord of the villayne may entre into the lande so purchased by his bandman & put hym and his heyrres out for euer, & this done, the lord yf he wyl may lease the same lande to his villayne to holde of hym in villenage.

And here ye shall vnderstāde, that seruitute or villenage is þ ordinaūce, not of the law of nature but of that law, which is called Jus gentium, by whych a man is made subiecte (contrary to nature) vnto an other mannes dominion. For he that is a villaine or bondman, eyther he is so by tytyle of prescription (þ is to say) he and his auncestours haue bene villaynes tyme out of mynde, or els he is a villayne by his owne cōfession in court of record, so þ al villaines eyther they be

## Of villenage or

be borne villaines, or elles they be made so. They be borne villaines when theyr father beyng a bonde man hym selfe begetteth them in lawfull wedlocke, eyther of a free woman or of a bonde woman so that the father be bonde, the issue of hym lawfully begottē muste nedes be bonde by the lawes of Englande, haupnge no regarde to the condition of the mother, where as in the cyuill lawe of the Romanes it is clene contrarpe. For there *pattus sequitur ventrem* (that is to saye) the seruitute or bondage of the mother maketh the chylde bonde and not the bondage of the father. Howe be it the bastard sonne of a bondman shal not be bond and the reason is bycause a bastard is, *Nul- lius filius* in the lawe, that is to saye no mans sonne.

They be made bondmē or villaines two wayes, either by theyr owne propre acte, as when a free persone beyng of full age wyl come into a court of recorde, & there cōfesse hym selfe bonde to an other man.

Or elles by the lawes of armes called *Jus gentium*: as when a man is taken prysoner in warres, and is compelled to serue and become the thral and bondman of him that toke hym: the lawe calleth such persone  
a vil-



a villayne that is to say a slave and thral.

And ye shall note that villaynes be properly called in Latin serui, bycause when they be taken in warre, the captaynes be wonte not to kyll them, but to sel them, and so to save theyr lyues, so that they be called serui a seruando, that is to saye of sauyng. They be also called Mancipia; a manu capiendo, bycause that they be taken by hande and power of the chemyes.

Nowe as I sayd by the lawe of nature we are al borne free; but after that by the lawe of Gentilitie, seruitute or bondage byd presse and made the worlde; then ensued the benefyte of manumission. Manumissio is quasi de manu datio, that is to saye a gyfte out of the hande or power. For so longe as a man is in bondage and seruite, he is subiecte to the hande and power of an other; and when he is manumitted he is made free & deliuered from the sayde power, so that a manumission is nothyng else then an enfranchisement that is to saye, a wyteinge testifienge that the lord hath enfranchised his villayne and all his offsprynge and sequelle.

Also yf the lord maketh to his bondman an obligation of a certain summe of money

## 1101. 107 Of villenage or

or graunteth to hym by his dede an annuallie  
or yearly pension, or leaseth to hym by dede  
landes or tenementes for terme of yeres, any  
of these actes do imply an enfranchisment.  
¶ If the lord by the lawe maketh a feoffe-  
ment to his villayne, and maketh vnto him  
livery of seisin, this also is an enfranchi-  
ment and secreete manumission. Briefely to  
speke, whete so euer the lord compelleth  
his villayne by the course of the lawe to do  
that thinge þe he myght otherwys enforce  
him to do or to suffer without the auctorite  
and compulsion of the lawe, he doth by im-  
plication enfranchise his villayne, as yf  
the lord for byrgage agaynst his villayne  
suffereth of det, an action of accompt, of co-  
uenant or of trespass, these & such lyke be  
in the eye of the lawe enfranchismentes &  
manumissions, because that the lord in all  
these cases maye haue the effecte & purpose  
of his suite (that is to saye) the goods, re-  
tore, and correction of his bondman without  
the compulsion of the lawe euen by his owne  
proper power and auctorite which he hath  
vpon his villayne. But yf the lord doeth  
sue his villayne by an appeale of felonye,  
the villayne being lawfully endyted of the  
same before, this is no tacite manumission



or infranchisement, for the Lord though he haue power to beate hys villayne and to spoyle hym of hys goodes, yet he can not by þe lawe of this realme put hym to death

Ye shal also vnderstāde, that yf a mānes bondman purchased landes or acquyre and gette vnto hym any other thyng, the lord maye forthwith entre, and lease the same into hys owne hādes. Wherfore yf the lord wyl brynge agaynst hys villayne a precipe & reddat, by whych he demaundeth against his villayne any landes or tenementes this implyeth an enfranchisement, for as muche as he byndeth hym selfe to the prescripte & authoritie of the lawe, where as he myght vse his owne authoritie, by eutrynge & leaseynge the sayd landes.

Finallye ye shal marke that some villaynes be called villaynes in grosse, and other some be called villaines regardant. In grosse be they of which the lord is feodally seased, and not by reasone of any lordship or maner, but they be called regardant whiche do belonge to a Mancure, of which the Lord is seased, and the sayde villaynes haue bene regardant (that is to saye) expectant and attendaunte tyme out of mynde to the lord of the sayd Mancure,

## Of auncien demene.

in doyng vnto hym suche scrupces as to a  
villayne appertayne.

## Of Auncien demene.

**H**ere is also a certayn kynde of ten-  
nure whiche is called auncien de-  
mene, & þe tenantes which holde by  
this service be fre holders & holde  
by charter & not by copy of court rolle, or by  
the verge after þe custome of þe manour at þe  
wyl of the lord. And these tenants be suche  
as holde of those manours which were S.  
Edwardes þe Kyng or which were in than-  
des of Kyng William the conquerer, & these  
manours be called the auncien demenes of  
the Kyng, or þe auncien demenes of þe crowne  
of Englande. And to tenants whiche hold  
of suche manours be many & dyuerse libe-  
ties graunted & graunted by þe law, as to be quite  
of tolle & passage and such lyke impositiōs  
which be demaunded of me for theyr goodes  
and catalles sold or bought in fayres & mar-  
kets by them, also to be quite & fre of taxes  
and tallage graunted by parliament, except  
þe kynges maiekie do taxe auncien demene  
(as to him only appertayneth) whē he thin-  
keth good for great & vrgent considerations.

Itē



## **Of auncien Demeane. Fol. lix.**

Tenautes also of auncien Demeane ought to be quyte of paymētes to ther penes & charges of the knightes which come to the parliament, also they ought not be impanelled nor put in iuries & inquestes in the countre out of theyr manour or seignorie of auncien Demeane for the landes which they hold of suche manour, onles they haue other lādes at the cōmon lawe for which they ought to be charged. And yf suche tenautes or any of the which hold of the manour of auncien Demeane be distreyned to do vnto theyr lord other seruyces or customes the they or theyr auncestours haue vled to do, then may they sue a certayne writte called Monstraucunt, directed to the lord, cōmaūding him that he distreyne them not for to do other seruyces or customes then they haue bene accustomed to do.

And for further knowlege herof ye shal vnderstande that in the Eschequer there is a boke called Domesdaye which boke was made in the tyme of the sayd saint Edward. And al the landes whych were in the seisin & in the handes of the sayd saynt Edward at the tyme of the making of the sayd boke, be auncien Demeane. But the landes whych then were in other mennes handes though

**D. iiij.** they

## Of auncien Demene.

they be wrytten in the sayd boke, be franke fee and no auncien demene.

Finally it is to be noted, that tenantes of auncien demene shall not be impleded for they: sayd lādes out of the manour wherof they so hold, and if they be, they may shewe the matter and abate the wrytte. But yf they oues answere to the wryt, and iugement gyuen, then the landes haue loste the nature and benefite of auncien demene, and are become franke fee (that is to saye) pleadable at the common lawe for evermore. And thys haue we spoken of the dyuersitie of tenures.

## Of rentes.

**A**s muche as vppon every tenure there is commoulye reserued one rente or other: therfore I thynke it good somwhat to treate of rentes.

But ye muste vnderstande that there be sundrye sortes of rentes. There is one kynde of rente whyche is called rente seruyce. Another whyche is called rente charge, and the thyrde whyche is named in frenche rente secke, that is to saye in latine redditus siccus, a drye rente. Nowe rente ser-

uice



rente is so called bycause it is knytt to the  
 tenure, and is as it were a seruyce, wher  
 by a man holdeth his landes or tenement  
 tes, or at lest waye when the rente is unse  
 nerably coupled and knyt woth the seruyce,  
 as for an example, whete the tenant hol  
 deth his lande of the kynge or of any other  
 lord by fealtie and by certayne rente, or  
 by homage, fealtie and certayne rent, or by  
 any other sortes of seruices and by certayne  
 rent, this rent is called rente seruyce. And here  
 ye shal note, that yf this rent seruyce, be at  
 any tyme whē it ought to be payed, behinde  
 and vnpayde, the lord of whom the lande or  
 tenement is so holden, whether it be in fee  
 simple, fee taylor for terme of lyfe, for yeres  
 or at wyl, maye of common ryght curte and  
 distrayne for the rent, though there be no  
 mencion at all, ne clause of dystresse put in  
 the dede or lease. I sayd before, that the na  
 ture of this rent seruyce is to be coupled and  
 knyt to the tenure. For whete no tenure is,  
 there can be no rent seruyce. And therefore,  
 yf at this day I be seised of landes in fee sim  
 ple, and make a dede of feoffemente of the  
 same to an other in fee simple, reseruinge by  
 the same dede a rente, this can be called no  
 rente seruyce, bycause there can be now no

## Of rentes.

tenure betwene the lessour and the lessee. Otherwyle it is of feoffemētes in fee simple made before the statute of Westminster the thyrde called *Quia emptores terrarū*. For before the makynge of the statute, yf a man had made a feoffement in fee simple, reseruyng to hym a certayne rent, yea though it hadde bene without dede, here had bene begonne & created a newe tenure betwene the lessour and y lessee, & the lessee shulde haue holden of the lessour, who by vertue of the same might of cōmon right haue distecyned for suche rent. But at thys daye by force of the sayde acte, there can be no such holdyng or tenure created nor begonne, and consequently no rent seruyce can be at thys daye reserued vpon any gyft in fee simple, except it be in y kinges case, who being chiefe lord of al, euer might & may giue lādes to be holden of hym. Thus ye se, that at this day, no subiect cā reserue any rēte seruike vnto him onles the reuerlion of the landes or tenementes that he shall graunt, be styll in hym, as where he graunteth them in fee taylor, or maketh but a lease for terme of lyfe or for certayne yeaeres or elles at wyll. For in all these cases reuerlion of the fee simple remaineth styll in hym, and therefore yf here be



be any rent reserved, it is to be called a rent seruyce, and is of cōmon right distreynable though there be no clause of dystresse in the dede of fessment or lease.

But here ye wyll aske me, when in the case before remembred, a man at this daye gyueth cleane away the lande or tenement from him selfe in fee simple, so that there is no maner of reuerſion of the same remaynyng in hym at all, and yet neuertheles reseruethe vnto hym by hys dede a certain cēt: what maner rent thys shalbe called? I answer, yf there be in the dede indented any clause of dystresse put, that is, that yf the rent be behynde vnpayed, it shalbe lawfull for the fessoure to entre and to dystreyne, it is called a rent charge, for as muche as the lande is charged therwyth, but howe? of cōmon ryght: no, but only by vertue and force of the wytyng.

But on þ other syde, yf there be no suche clause of dystresse put in the indenture, then the rent so reserved shalbe called a cēt seck.

Aske wyll ye, yf a man that is seyled of certayne landes, wyll graunt eyther by indenture, or by hys dede polle that is to say single and not ended, a yearly rent out of the same landes to another, whether it be in fee  
Simple

## Of rentes.

Simple, fee taylor, for terme of lyfe, for yeres  
or at wyll, wyth clause of dystresse, the this  
rent is called a rent charge and he to whom  
suche rente is graunted maye for default of  
payment thereof, entre and dystayne. But  
contraryly, yf the graunt be made wythout  
any such clause of dystresse, it is called rent  
secke that is to saye a dyerent, bycause he  
can not come to it in case it be denyed, by  
way of dystresse in so much that yf he were  
never seysed of it, he is by the course of the  
comon lawe wythout remedye. Otherwyse  
it is of a rente charge, for here he to whome  
the graut is made, when the rent is behynde  
maye chose whether he wyll sue a wypte of  
annuitie agaynst the grauntour, or dystaine  
for the rent behynde, & retayne the dystresse  
tyl tyme he be payd accordingly. But he can  
not haue both remedies together but muste  
take hym to the one, for yf he ones recover  
by a wypte of annuitie, then is the lande dys-  
charged. And yf he sewe not his wypte of an-  
nuitie, but dystayne for the arerages, and  
the tenaunt seweth a repleuin, where vpon  
the other auoweth the takynge of the dys-  
tresse in court of recorde: then is the lande  
charged and the persone of the grauntoure  
dyscharged of the action of annuitie.



Ye shall also vnderstande, that yf a man  
wyl, that an other shall haue a rent charge  
comynge out of hys lande, and yet wyl not  
that his pson shuld be by any meanes char-  
ged by wytte of annuite, he may the haue  
suche clause in the ende of hys dede. *Prout*  
*so qd presens scriptum, nec quicq in eo con-*  
*tentum villo pacto se extendat ad oneranda*  
*personam meam per breue seu actionem de*  
*annuitate, sed tantummodo valeat ad oner-*  
*tandum, terras, fundos, et tenementa mea*  
*de annuo redditu predicto.* Yf thys or suche  
lyke clause be added, then the lande is char-  
ged and the persone of the grauntour is dis-  
charged.

Also yf a man wyl make a dede of graunt  
in thys wyse, that yf John at Style be not  
yearly payd at the feast of Christmas for ter-  
me of hys lyfe. *xx. shillinges sterlynge.* that  
then it shall be lawfull for the sayde John  
at Style to dystayne for it in the Manoure  
of Dalc: thys is a good rent charge, bycause  
the Manoure is charged wyth the rente by  
waye of dystresse, & yet neuertheles in thys  
case the persone of hym that made suche  
dede is discharged of any action of annuite  
for asmuch as he graunted not by his dede  
anye annuite to the sayde John at Style  
but

## Of rentes.

but only graunted, that he myght discharge  
for such yearly rent.

Furthermore ye shal note, that yf a man  
hath a rent charge to hym and to his heires  
commynge out of certayne landes, and doth  
purchase any parcel of this lade to him & to  
his heires, in thys case the hole rent charge  
is quenched and gone, and the annuittie al-  
so, the cause is thys, that a rent charge can  
not be in such case apporcioned. Otherwys  
it is of a rent seruice, for yf one which hath  
a rente seruice, as for example. xx. d. by yere  
doth purchase parcell of the lande out of  
whych this yearly rent of. xx. d. is comynge  
thys shal not extingyshe nor drowne the  
hole rente, but for that parcell onely. For  
rente scruipe in suche case maye very wel  
be apporcionate and rated accordyng to the  
value of the lande. Yet there be some sortes  
of rentes scruiues whych in no wyse can be  
apporcioned. As where a tenaunte holdeth  
hys lande of hys lord by the seruice to ren-  
dre to hys lord yearly at suche a feast, an  
horse, a ryng of golde, a redde rose, a gylo-  
uer, or such like, yf in this case y lord doth  
purchase parcell of the lande thus of hym  
holden, thys seruice is gone, bycause suche  
seruice can not be severed nor apporcioned.  
Also



Also escuage is a seruice that may very wel be appoynted accordyng to the afferaunce and rate of the lande.

But where anye lande is holden by homage & fealtie, yf the lorde purchaseth parcel of the lāde, yet he shal haue his homage and fealtie styll of hys tenaunt.

Ye shal marke also, that yf a man maketh a lease of landes to another for terme of lyfe, reseruyng to hym certayne rent: yf in thys case he graunterh the rente to John at Style sayunge to hym selfe the reuer- sion of the sayde lande, thys rente is but rent secke bycause John at Style that hath the rent; hath nothyng in the reuer sion of the lande. But yf he graunteth the reuer sion of the lande to John at Roke for terme of lyfe and the tenaunt atturneth accordyng- lye, then hath John at Roke the rente as rente seruice bycause he hath the reuer sion for terme of hys lyfe.

Lyke wyse it is, yf a man gyueth landes or tenementes in sayle, reseruyng to hym and to hys heyres certayne rent, or maketh a lease of the lande for terme of lyfe, reser- uyng certayne rent, yf he graunteth the re- uer sion to another & the tenaunt atturneth accordynglye, the hole rent and seruice shal  
palle

## Of rentes.

pasſe by thys worde reuerſion, bycauſe the  
rent and ſeruitce in ſuche caſe be incidente to  
the reuerſion and do paſſe by the graunt of  
the reuerſion. But yf he had graunted the  
rent onely: the reuerſion had not paſſed.

**W**hat remedye a man hath to  
recouer hys rent when it is  
behynde.

**I**ſhewed you before, that for a  
rente ſerupce yf it be behynde, ye  
maye dyſtrayne in the grounde es-  
ſen of cōmon right though there  
be no ſuche claue of dyceſſe mencioned in  
the dede of feoffement, graunt or leaſe. Alſo  
for a rent charge ye maye dyſtrayne or bring  
your wyrt of annuities at your choiſe & elec-  
tion, as before is declared. But of rent ſeck  
yf ye were neuer ſeiſed of it nor of any par-  
cell thereof, ye be wythout remedy by courſe  
of the cōmon lawe, for ye can not dyſtrayne  
for it, nor yet bringe your wyrt of annuities,  
but yf ye were ones ſeiſed of it or of parcel  
thereof and it is eſſoncs behynde, thē your  
remedye ſhalbe thys. Ye muſt go eyther by  
your ſelfe or by your debite to the lande or  
tenement out of which the rent is cōpyng  
and there demaunde the arerages of the  
rent



rent, whych yf the tenaunt denye to pay, this denial is a disseisin of the reute. Also yf the tenaunte be not then ready to paye it, thys counteruayleth a denyall whych is a disseisin. Moreover yf neyther the tenaunt nor none other man be remaynyng byppen the ground to paye the rent, when ye demaunde the arrears, thys also is a denial in the lawe, and is in verry dede a disseisin. And of these disseisines ye may haue an assise of nouell disseisin agaynst the tenaunt, and shal recouer seisin of the reute and the arrears, and your damages and costes of your wytt and of your plee. And yf after such recovery & execution had, the reute be agayne at an other tyme denyed you, then ye maye haue a redisseisin and shal recouer your double damages. &c.

It shalbe therfore wysedome for a man when a rent is graunted by anye personne vnto hym, to take of the tenaunt of the lade a peny or an halfe peny in name of seisin of the rent, and the yf at the nexte daye of payment the rent be denyed hym, he may haue an assise of nouel disseisin.

And ye shall note, that there be thre causes of disseisin of reue service, that is to wote rescousse, repleuin and incloser. Rescousse is  
when

## Of rentes.

When the lord upon the land holde of hym, distrayneth for hys rente behynde, and the distresse is rescued from hym, or yf the lord come upon the lande and wyl distrayne, and the tenaunt or any other man for hym wyl not suffre hym, thys is called Rescouse.

Repleuin is, when the lord hath dystrayned and repleuin is made of y distresse by wyte or by playnt. Encloser is when landes or tenementes be so inclosed that the lord can not come wythin the landes or tenementes for to dystrayne. And the chefe cause why suche thynges so made be disseisins to the lord is for asmuch as the lord is by thys way dysturbed of the meane and remedy wherby he ought to come and haue hys rente, that is to wete, by distresse.

And there be foure causes of disseisin of a rent charge, that is to wete, rescous, repleuin, encloser, and denyer. For denyer or denyall is as well a disseisin of a rent charge, as it is of a rent secke.

Fynally ye shall vnderstande, that there be two causes of disseisin of a rent secke, that is, denial and encloser.

And it semeth that there is yet an other cause of disseisin of all the thre rentes aforesayde, that is to wete thys, when the lord cometh



cometh to the lande holden of him, or when he that hath a rent charge or a rent secke cometh to the lande to distrayne for the rent behynde, and the tenaunt hearynge thys, encountreth hym, and forstalleth hym the waye with force and armes and manasseth hym in such sorte as he dare not come to the grounde for to distrayne for hys rent behynde for feare of death or murther of hys members: thys is a disseysin bycause the partie is dysturbed of his meane and lawful remedye wherby he ought to come to his rent.

Finally ye shall obserue and marke, that by an act of parlyament made in the. xxxii. yere of our soueraygne lord kynge Henry the eyght, it is lawful for the executors and administratours of tenantes in fee simple, tenantes in fee tayle, and tenantes for terme of lyfe, of rent seruices, rent charges, rent seckes, and of fee fermes, for the arretries of suche rentes as were due vnto theyr testatours in theyr lyues, eyther to distrayne for the same or at theyr election to brynge an action of dette, excepte in suche lordshippes in Wales or in the marches thereof, where as the tenantes haue vsed tyme oute of mynde to paye vnto every lord at hys fyrst entree into the lordshipp any sume

## Of rentes

of moneye for the redemption of all maner duties and penalties incurred at any tyme before theyr lordes entyre

Also by force of the sayde acte the husband whiche was seysed in the right of his wyfe maye after the death of hys wyfe eyther distrayne or bypunge an accion of det for the arerages of suche rentes as were due and by payde in her lyfe.

Likewyse it is of hym that hath a rente for terme of an other mans lyfe, yf he for terme of whose lyfe he hath the rent dyeth, yet by vertue of the sayde acte he or hys executors and administratours maye eyther distrayne or bypunge an action of debte for the arerages due before the death of hym for terme of whose lyfe he had the rent.

**Howe Auowries ought to be made  
of rentes and seruices, enacted  
anno. rxi. Henrici. viii.**

**W**here any landes beho:den of any person by rentes, customes, or seruices, yf the lordc dystrayne vpon the same landes for any suche rentes, customes and seruices, & repleuin theroof be sued, the lordc may auowe or his baylyfe or seruant maye



## Of rentes. Fol. lxxvi

maye make conisaunce or iustifye the takyng  
vpon the same lādes, as within his fee and  
seignorie, alledgyng in the sayde auowrye  
conysaunce or iustification the same landes  
to be holden of hym, without namyng anye  
persone certayne to be tenaunt of the same,  
and without makynge any auowry, iustifi-  
cation, or conisaunce vpon any persone cer-  
tayne. And lyke wyse vpon euery wytte su-  
ed of seconde delyueraunce. And they that  
make any suche auowry, iustification, or co-  
nisaunce, yf the same auowry, conisaunce or  
iustification be foude for them, or the playn-  
tyfe by nonsuyte or other wyse barred, then  
they shall recouer theyr damages & costes.

Also the sayde playntiffes and defendau-  
tes shal haue lyke ples and lyke arde praye-  
ers (ples of dysclaymer onelye excepte) as  
they myght haue had before the makynge  
of thys acte.

Also suche persones as  
by the cōmon lawe maye ioyne to the plain-  
tyfe or defendauit in the sayde wyttes of  
Replegiare or seconde delyueraunce, as wel  
wythout processe as by processe, shall from  
henfforth also in thys case ioyne vnto them  
as well wythout processe as by processe, and  
haue lyke plee, & lyke auantages in al thyn-  
ges (disclaymer only excepte) as they might

**F**or assuraunce of  
haue by the comon lawe before thys acte.

**A**n acte for the assuraunce of  
fermoures, made. anno.  
xxii. Henrici. viij.

**A**l leases hereafter to be made of anye  
landes or other hereditamentes by wryt-  
tyng indented vnder seale for terme of yea-  
res or for terme of lyfe by any pson beynge  
of thage of. xxi. yeares hauynge any state of  
inheritaunce eyther in fee symple or in fee  
taylor in theyr owne right or in the ryght of  
theyr churches or wyues, or ioyntly wyth  
theyr wyues, shalbe good & effectual against  
the lessours theyr wyues heires and succes-  
sours accordyng to the state comprised in such  
indenture of lease.

Provided that this acte shall neyther ex-  
tend to any leases to be made of any lades or  
hereditamentes beynge in the handes of a-  
ny fermour by vertue of any olde lease un-  
les the same olde lease be expyred terryed  
or ended within one yeaer after the making  
of the newe lease, nor yet to any graunt to be  
made of the reuertion of any landes or here-  
ditamentes, nor to any lease of such landes



or hereditamentes as haue not commonlye  
 bene letten to ferme by the space of .xx. yea-  
 res nexte before such lease therof made, nor  
 to any lease to be made wouthout impeache-  
 ment of waste, nor to any lease to be made a-  
 boue the nombze of .xxi. yeres or thze lyues  
 at the most from the daye of makinge ther-  
 of. And that vpon suche lease be reserved  
 yearly durynge the same, and due and pay-  
 able to the lessours theyr heyres and succes-  
 sours to whō the lādes shuld haue come af-  
 ter the deathes of the lessours and to whom  
 the reuerſion therof shal prayne according  
 to theyr estates and interestes, so much yer-  
 ly rent or more, as hath bene accustomed  
 yeldyng for the same within .xx. yeres next  
 before suche leases, and that be to whom  
 the reuerſion therof shal pertayne after the  
 deathes of suche lessours or theyr heyres:  
 shall haue suche lyke remedye and auaun-  
 tage aga ynst the fermours therof theyr exe-  
 cutours and assignes, as the lessour himself  
 shulde haue had.

Provided also that ſ wyfe be made par-  
 tie to euerye suche lease as shalbe made by  
 her husbāde of any lādes beyn g the inheri-  
 tance of the wyfe, and that euerye such lease  
 be made by indenture in the name of ſ hus-

J. iij. bande

## Of fermours.

bande and hys wyfe, and she to seale there vnto. And that the rent be reserued to the husbāde & wyfe & to the heires of the wyfe according to the state of enheritaunce therein. And that the husbāde shal in no wyse aliene discharge graunt or giue away the same rent reserued nor any part thereof longer thē durynge the couerture, wythout it be by fyue leuyed by the sayd husbāde and wyfe.

Provided furthermore that thys acte extēde not to gyue any lybertie or power to any psones to take any mo fermes leases or takynge of anye landes or other heredita- mentes, then they myght haue done before the makynge of thys acte, nor yet extēde to gyue any lybertie to any person or vicare of any church or vicarage for to make anye lease or graunt of any theyr messuages landes, tenementes, tythes, profits or heredita- mentes belongynge to theyr churches or bycarages otherwyse thē they myght haue done before the makynge herof.

Anno. xxxiii. Henrici. viii.

It is furthermore enacted þ the graunt, lease gift or election of the gouernour or ruler of any hospital, college deantye or other corporatiō w thassent of the more pt of such of þ same as haue voyce therunto shal be  
good



good & effectual any rule or statute made by any folider to the contrary notwithstanding

**O**f falsifyenge of recoveries by fermers inacted anno. xxi Henrici .viii.

**A** fermers or lessees for terme of yeres may falsifie for theyr terme only, recoveries had by fayned tytles as well as a ternaunt of frehold And the same fermers their executours and assignes shall enioye theyr sayde termes accordyng to theyr leases agaynst such recoveries even as yf none such had be suffered. In whych case neuerthelesse the recoueter, after suche recovery had, shall haue lyke remedye agaynst the termes by auowry or action of dette for rētes and seruices reserved vpon the same lessees beyng detowe afore the same recoveries, & lyke actiōs for wast done after the same recoveries, as the lessours myght haue had yf no such recovery had be had. Furthermore no statute staple, statute marchaunt, nor execution by elegit shall be auoyded by any suche fayned recovery, but lyke remedy shall be had to auoyde and falsifye the sayde recoveries, as is ordeyned for the fermour or lessee for terme of yeres.

¶.iii. Of

## Of tythes.

Of tythes and howe they shalbe  
recovered, enacted anno. xxxij.

Henrici. viij.



All persons shal truly pay theyr tythes  
& offerings accordynge to the law-  
full customes & vsages of parishes  
& places where suche tythes or du-  
ties be due: And yf they do wylfully with-  
holde any parcell of them: the partie whe-  
ther he be ecclesiasticall or laye that shulde  
haue, may conuent suche persons before the  
ordinary bys commissary or other competent  
minister or iudge of the place where suche  
wronge shalbe done accordynge to the eccle-  
siasticall lawes. And in euery such cause of  
suyte the same ordinarie or iudge haupnge  
the parties or theyr procuratours before  
hym, shal procede to the determination ther  
of ordinarie or summarie accordynge  
to the course of the sayde lawes, and there  
vpon shal grue sentence accordynge.  
And in case any of the parties for any mat-  
ter concernynge that suite, do appeale from  
the sentence and diffinitive iudgemente of  
the sayde iudge, then the same iudge forth  
wyth vpon such appellation made, shal ad-  
iudge to the other partie the reasonable costes  
of bys



of hys suite, and shall compel the same partie appellāt to pay the same by compulsory procelle and censures of the sayd lawes, taking suretie of the other partie to whō such costes shall be adiudged to restore the same to the appellāt, yf after ward, the principal cause of that suite of appeale shalbe adiudged agaynst hym, and so every iudge ecclesiasticall shall adiudge costes to the other partie vpon every appeale to be made in any sute or cause of subtraction or detention of any tythes or offerings or in any other sute to be made concernynge the duitie of suche tythes or offerings. And yf any persones after such sentēce gye agaynst them, shal obstinately refuse to pay theyr tythes or duties or such sūmes of money so adiudged wherin they be condemned, the two Iustices of the peace of the same shyre, wherof one to be of the Quorum, shall vpon certificat or complaynte to them made in wytyng by the iudge that gaue the sentence, cause them to be attached and commytted to the nexte Gaile, there to remaine wout baile or mainprise, tyl they shal haue founde sufficient sureties to be bounde by reconsaunce or otherwise before y same iustices to y kynges vse for the performaunce of the said iudgement.

## Of tythes.

Provided, that no person shall be sued or otherwise compelled to pay any tythes for any landes tenementes or hereditamentes whych by the lawes of thys realme are discharged or not chargeable with the paymēt of any suche tythes.

Also thys acte shal in no wyse bynde the inhabitantes of London & suburbs of the same, to pay theyr tythes & offeringes with in the same cytie & suburbs otherwyse than they shulde haue done before.

Furthermore yf any haupngc an inheritaunce freholde terme or interest in any psonage vicarage porcion, pension, tythes, oblations, or other ecclesiasticall profyte made or to be made temporal or admytted to be in temporal hādes by the lawes or statutes of thys realme, be disseised or otherwyse put frō the same by any other pson clayming to haue interest therein: the person so disseised or wrongfully put frō his sayd ryght or possession his heyres, wyfe, & other to whome suche wronge shalbe done, may haue remedye in the kynges temporal courtes, as the case shal require for therof recovery by writtes original of prec. q. reddat, ass. of novel disseisin, mortdance. Quod ei de forciat writtes of dower, or other writtes originall to be



be graunted in the chācery of euery such pso-  
nage vicarage porciō pensiō or other profyt  
ecclesiastical according to þ nature of þ surs  
therof. And writtes of couenāt & other writ-  
tes for fynes to be leuied & al other assuran-  
ces to be made of any such personage or pro-  
fyt ecclesiastical shalbe deuysed & graunted  
there, lyke as hath bene vled for fynes to be  
leuied & a sūtace to be had of lādes or other  
hereditamētes, & all iugemētes gyuen vpon  
such writtes original graunted for any þ pre-  
misses, & al fines leuied & knowleged in any  
of the kinges said courtes therof, shalbe of  
lyke force as iugemētes giuē & fines leuied  
of lādes reuēmetes and hereditamentes.

Of mortuaries, enacted.

an. xxi. Hen. viii.

**N**o persone spiritual thep? fermers  
nor bayliffes shal cal any person be-  
fore any iudge spiritual for the reco-  
uery of any mortuaries more then  
is hereafter mencioned vpon payne to for-  
fait for euery tyme so much in value as they  
shal take aboue þ sūme here limited & ouer  
that. xl. s. to þ pte greued, for which he shal  
haue an actiō of det by wryt byl or informa-  
tiō, wheri no wager of law esloin nor pre-  
tiō shalbe allowed. First no mortuaries shalbe  
ta-

## Of Mortuaries.

ken of any whych at hys death hath in mo-  
uable goodes vnder the value of .x. marke.  
Also no Mortuarie shall be taken but only  
where Mortuaries haue bene vsed to be  
payde, and there after the forme hereafter  
mencioned. Nor in no mo places but one,  
that is to wete, there where hys most aby-  
dyng in and there but one. Nor no persone  
shal take for a Mortuarie of any person be-  
yng at hys death of the value of .x. markes  
aboue his dettes paid & vnder .xxx. li. aboue  
iiij. s. iiii. d. And of þ value of .xxx. li. and vn-  
der .lx. li. not aboue .vi. s. viij. d. And of the  
value of .lx. li. or aboue to any sūme what so  
euer it be, not aboue .x. s. Also no mortuary  
shall be asked nor payd for any woman co-  
uert barð, or child, or any person not keeping  
house, or for any wayfaring mā, but þ mor-  
tuaries of suche wayfaryng men be answe-  
rable in þ place where they had theyr mooste  
dwellyng at the tyme of theyr death.

Neuertheles such spiritual person may  
take any thyng whiche shalbe disposed or  
bequethed to hym or to the hyghe aulter of  
the church. Also nothyng shalbe taken for  
Mortuarie in Wales nor þ marches of the  
same, nor in Calys or Berwyke or the mar-  
ches of the same, but only in suche places of  
the



## Of mortuaries. fol. lxxi.

the same where mortuaries haue bene accustomed to be payd & there but onely after the forme aboue specified. Provided that by bishops of Bangour, Llandaffe, saint Davies and saynt Aske and the archdekan of Chester maye take suche mortuaries of the prestes within theyr dioceses and iurisdiccions, as heretofore haue bene accustomed. Provided also, that in such places where mortuaries haue bene accustomed to be taken of lesse value, none shalbe compelled to paye anye other mortuarie or more for any mortuarie the hath bene accustomed, nor no mortuarie there shalbe demaunded of any person except by thys acte vpon payne afore lymitted.

### Of dyscontinuance.



It is called a discontinuaunce by the lawes of Englande, whē he that hath the possession of landes or tenementes for the tyme present and yet not hauynge the fee simple in him selfe nor in his owne ryghte onely, maketh an alienation of the same to an other, by reason wherof, he that shuld haue them after hym and which then hath right vnto them, can not entre, but is driven to hys remedy by way of action, in  
suche

## Of dyscontinuance.

Such wise that the said lādes be not utterly  
wytted and gone fro such person or psones  
as haue ryght vnto them, but be alonly dis-  
continued for a tyme, tyl the person whych  
after the death of suche dyscontinuer hath  
ryght vnto them, do recontinue and brynge  
them home agayne not by entre but by sure  
and way of action. As for example, yf tenāc  
in tayle of certayne lādes doth infecte an o-  
ther in the same, in fee simple or fee tayle &  
hath issue and dyeth, hys issue can not entre  
into the laundes, though he hath tytle and  
ryght vnto them, but is put to hys action,  
whych is called a forme done in the descē-  
dre. And yf suche ternaunt in tayle whych  
maketh suche a feoffement, hath no issue at  
time of his death, it is yet neuertheles a dis-  
continuance to hym whych is eyther in the  
reuerſion or in the remaindre, so that ney-  
ther thone nor thother can entre, but be dri-  
uen to theyr action he in the reuerſion to  
his forme done in the reuertir, and he in the  
remainder to his forme done in y remaindre

In lyke maner yf a byshop doth alien lā-  
des which be parcel of his byshoprych, and  
dyeth: this is a discontinuāce to hys succes-  
ſour forasmuch as he cā not entre, but is dri-  
ue to his wyrt of entre sine assensu capituli.

**Semblable**



## Of dyscontinuaunce. fo. lxxii.

Semblably, yf a Deane be sole seised of landes as in the right of hys deantye & maketh suche an alienation, this is a discontinuance to his successour. Also yf the maister of an hospital alieneth any lādes of his hospital, this is a discontinuance and hys successour cā not entre, but is put to his wpytredc ingressu sine assensu confratru & sororu.

But yf a person or vicare of a church wil alie any of hys glebe lādes to an other in fee simple or in fee tayle, & dyeth or resygneth his benefyce: this is no dyscontinuaunce to his successour, but he maye very wel entre, not wythstandynge suche alienation made by hys predecessour.

Also ye shal vnderstāde, that in the. xxxij. yere of this kings most noble reigne, it is enacted, þ̄ no fine feffement or other acte to be made or suffred by þ̄ husbād only, of any lādes or tenemētes being the inheritaunce or freehold of his wyfe durynge the couerture betwene thē, shalbe any discōtinuance theroof, or be preiudicial or hurtful to þ̄ said wyfe or to her heires, or to such as shal haue ryght title or interest to þ̄ same by þ̄ death of such wyfe but þ̄ the same wif & her heires, & such other to whom suche ryght shal apperteyne after her deceasse maye then lawfully entre  
into

## Of discontinuance.

into al suche landes and tenementes accordyng to theyr ryghtes and tytles therein.

**¶** Howe recoveries by collusion agaynst tenauntes for terme of lyfe is no dyscontinuance, inacted an. cccc. Hen. viii.



Here dyuerse persones leased of landes and hereditamentes, as tenauntes by the curtesye of Englande, or otherwysely onely for terme of lyfe or lyues haue heretofore suffered other persones by agreement or couin betwene them had, to recover the same agaynst them in the kynges court, by reason whereof, they to whome the reuersion or remaynder thereof hath belonged, haue after the deathes of suche tenauntes bene dyspuen to theyr actiōs for the recontinuance & obtaynyng of the sayd landes and tenementes so recovered, and somtyme haue bene clearly dysherited of the same: it is inacted, that all suche recoveries hereafter to be had by agreement of the partie or by couin, against any suche particulaire tenaunt of landes or hereditamentes, wherof he is or hereafter shal be leased, as tenaunt by the curtesie of Englande, tenaunt in tale after



## Of discōtinuānce. Fo. lxxii.

after possibilitie of issue extincte, or other-  
wise for terme of lyfe, shal from henceforth  
as agaynst such persons to whom the reuer-  
sion or remainder shal thā appertayne & a-  
gaynst theyr heires & successours, be clerely  
boyde:

Provided that thys acte extende not to  
any persone that shal by good tittle recover  
any hereditamentes wout fraude or couyn a-  
gaynst any such particuler tenaunt by reaso of  
any former ryght or tittle, nor yet to auoyde  
any recovery to be had agaynst any such par-  
ticular tenaunt by thassent and agremente  
of those in the reversion or remaynder, so  
that suche assent and agreement do appeare  
of recorde in the kynges court,

**¶** How wrongful disseisin is no discre-  
et in the lawe, enacted anno. rxxii.

Henrici. viii.

**W**here diverse persons have by strength  
and without tittle entred into lādes  
and tenementes and wrongfully dis-  
seised & dispossessed the ryghtfull ow-  
ners & possessours therof, & so beynge seaz-  
ed by disseisin have therof dyed seased by  
reason of which dyngse seised, the parties &  
were so disseised & dispossessed or such other

R. i.

per

## Of wrongfull disseisin.

persons as before suche discent myght haue lawfully entred into the sayd landes and tenementes be therby clerely excluded of theyr entree into the same and put to theyr action for their remedy and the recouery therin: it is enacted, that the dyeng seised here after of anye suche disseisour hauinge no ryghte or tytyle therein, shall not be demed any such discent in the lawe to take away the entree of such persons or theyr heyres which at tyme of the discent had good tytyle of entree into the same. Excepte that such disseisour hath had the peasable possession of the landes or tenementes wherof he shal so dye seised by the space of fyue yeares next after the disseisin by hym committed wythout entree or continuall clayme by such as haue lawfull interest therunto.

**T**he limitation of pre scription enacted anno. rrrvj. Hen. viij.

**N**o person shall sue or mayntayne anye wytte of ryghte, or make anye tytyle or clayme to any landes tenementes, rentes, annuites comons, p'sions, porcions, cotrodies, or other hereditaments



**Of prescription. Fo. lxxiii.**

mentes of the possession of his aunccestours or  
predecessours, & declare any further seisin or  
possession of his aunccestours or predecessors,  
but only of the seisin or possession of his aunc-  
cestours or predecessors whych hath ben seise-  
d of the same wryt, or next before the  
the teste of the same wryt, or next before the  
sayd tittle or clayme, so to be sued.

Also none shall sue or mayntayne anye  
a title of Mortuorance, colinage, aple, wryt  
of entree vpon disseisin done to any his aunc-  
cestours or predecessors, or any other action  
on possessary, vpon the possession of anye his  
aunccestours or predecessors, for landes or  
hereditamentes of further seisin or possession  
of them, but only his seisin or possession  
whych was seised therof within fyfty yea-  
res nexte before the teste of the originall of  
the same wrytte. And none shall mayn-  
taine action for landes or other heredita-  
mentes vpon his owne seisin or possession  
therin, aboue .xxx. yeres nexte before the  
teste of the originall of the same wrytte.

Item none shall make any auowry or con-  
fession for any rent, suite, or service, & alledge  
any seisin of the same in his auowry or con-  
fession in the possession of his aunccestours or prede-  
cessours, or in his owne possession, or in the

**At.ij. pos**

## **Of prescription.**

possession of any other whose estate he shall  
claime to haue, aboue fyfye yeares next be  
fore the makinge of the sayd auowry or con  
fession: Moreover all formedones in reuer  
se, formedones in remainder, and scire fac  
ias upon tyues of landes or other heredita  
mentes to be sued, shalbe taken within fyf  
tye yeares next after the tyle of action fal  
len: And yf any do sue anye of the sayde  
actions or wyttes for landes or other  
hereditamentes or make any auowrye con  
fession prescription or claime for any rente,  
suite, seruiſe, or other hereditamentes, and  
can not proue that he or his aunccestours or  
predecessours were in actuall possession or  
seasone therein at any tyme wythin the yea  
res before limited, yf the same be traucted  
or denyed by the partie playntiffe deman  
dant or auowant or by the partie tenaunt or  
defendant, he & his heires shall from hence  
forth be utterly barred for euer of euery the  
sayde wyttes, actions, auowries, confession  
prescription, tyle and claime hereafter to be  
sued or made for the same landes or other  
the premisses, for which such action wytte  
auowry, confession, tyle or claime hereaf  
ter shall be seued or made.

Provided that all persons whych nowe  
haue



## Of prescription. fol. lxxv.

have any of the said actions, wryttes, auo-  
ries, scire facias, conisauces, prescription,  
tytle, or clayme dependyng, or that hereaf-  
ter shall seme or byng any of the sayd wry-  
tes or actions, or make anye of the sayde au-  
ouries, conisauces, prescription, tytles, or  
claime at any tyme before the feast of the as-  
cention of oure Lorde whych shalbe in the  
yeare of oure Lorde a thousande fyue hun-  
dred fortie and fyve, shal alledge the sea-  
son of theyr aunccestours or predecessours,  
or theyr owne possession and season; & also  
haue all other lyke aduantage in the same  
wryttes, actions, auouries; conisauces;  
prescriptions and claymes: as they myght  
haue had before the makynge of this statute  
provided also, that if any person be no more  
wthyn the age of xii. yeares, or covert ba-  
ron, or in prison, or out of thys realme; now  
hauynge cause to byng any of the sayde  
wryttes or actions; or to make any auo-  
ries, conisauces, prescription or claymes,  
it shalbe lawfull to such person, to sue or  
byng any of the sayd actions; or to make  
any of the sayd auouries, conisauces, tyt-  
les or claymes at any tyme wthyn xii. yea-  
res nexte after such person shal be byng  
wthyn age; whiche shal complethe the age of

# Of prescription.

xxi. yeates, or nowe beyng covert baron,  
 shalbe sole, or nowe beyng in prison, shalbe  
 at theyr lybettie, or nowe beyng out of this  
 realme, shal come & be wrythin this realme.  
 And that euery such persones in theyr sayd  
 actiōs, auowies, confessions tytles or clay-  
 mes to be made sued or committed wrythin the  
 sayd xxi. yeates, shall alledge the sayson of  
 theyr ancestors or predecessours, or be theyr  
 owne possession, or of the possession of those  
 whose estate they shall then clayme: And al-  
 so wrythin þe same xxi. yeates shal haue lyke  
 aduantage in the same, as they myght haue  
 had before the making of this acte. It is orde-  
 ned also, that yf the sayd persons now beyng  
 wrythin age, or covert baron, in prison or out  
 of this realme, do dye wrythin age, or beyng re-  
 uerend in prison, or out of this realme or be-  
 cease wrythin vi. yeares next after theyr that ac-  
 complishe theyr full age, or shalbe at large,  
 wrythin this realme, or shall become sole, &  
 no determination or iudgement had of such  
 tytles, actions or ryghtes so to them ac-  
 quied, then the next heire of suche persones  
 shal enioye lyke aduantage to sue demaunde  
 & aduantage to make theyr sayd tytles,  
 & claymes of prescription wrythin xxi. yeates  
 next after the death of suche persones.



## Of prescription. fol. lxxvi.

as the same infant after hys full age, or the said woman covert after the death of her husbande, or the same person beinge oute of thys realme after hys repaire or cominge into the same, or the sayd person unpriisoned after hys enlargement and cominge out of prison, myght haue had within vi. yeares then next enseloyng by force of the provision last before rehearsed.

Provided also, that yf any persones before the sayde feast of the ascencion sue any of the said actions or make any auowrye title or clayme, and the same happen by the death of any the parties therunto, to be abated before iudgemēt or determination therof had then the sayd persons beinge demandantes or assautes, or makinge any such confession, prescription, title or clayme beinge then on lyue, & yf not, then they nexte beynges, may commence theyr action & make theyr auowrye confession or clayme vppon the same matter within one yeare nexte after suche suite abated, and shall haue lyke aduantage to sue demande assue declare or make theyr said titles claymes or prescriptions within the sayd one yere, as the demandantes in suche writ or suite abated, or as such as dyd auowe or make confession, title

clayme

## Of fynes.

clayme or prescriptiō, myght haue enioyned  
in þe said former action or sute.

Provided furthermore, that yf any false  
verdit hereafter be gyven in any of the sayde  
actions, lutes, auowries, prescriptions tyt  
les, or claymes then the partie grieved maye  
haue hys attaynt vpon euery suche verdit, &  
the playntiffe in the same attaynt vpon iudg  
ement for hym gyven shall haue lyke reco  
uerce, execution and other aduauntage as  
here to fore hath bene vsed.

## Of fynes.

**I**fnes haue theryn name, because they  
make a fynall ende and determyna  
tion of all lutes, stryfes & debates be  
twene mē. For the due leuening wher  
of it was enacted in the .iiii. yere of kynge  
Henry the .vi. that they muste be solemply  
before the iustices of the common place red  
and proclaymed the same terme and thre ter  
mes nexte folowynge the ingrossement, at  
whiche tymes all the ples must cease. And  
such fynes shalbe a sufficient barre and dys  
charge agaynst all persons, launye agaynst  
women that be couert baron yf suche womē  
be not pryue to the same fyne, or suche as  
be within age, in pryson oute of the realme,  
or oute of thei right myndes. But these  
fynes



Fynes shall not conclude ne barre all strangers whiche haue t'ryght to entre or to haue anye action, yf they come within .v. yeares after suche proclamations made or (in case the cause of action falleth vnto them after the fyne so buely leuyed) yf they come and commence theyr action and suyte within .v. yeares nexte after suche cause of action to them accrued. And they maye sue agaynst the takers of the profytes. But yf they that haue t'ryght thereto be within age, in pryson, covert baron, oute of the realme or not in theyr t'ryght memoire, then theyr title or entyre shalbe saued vnto them tyll they be of full age, oute of pryson, dyscouered and sole within the realme or of t'ryght mynde, and then within fyue yeares after theyr actiō or entrepre must be sued or made with effecte.

Also by the sayde statute it shalbe a good plee for al strangers to saue, that they that were parties to the fyne nor none other to theyr vse, had any thyng in the tenementes or landes at the tyme of the leuenge of the fyne.

Furthermore in the .xxv. yere of this kyng, for the aduoydng of certayne doubtes and ambiguities, it was enacted, that al fines as wel heretofore leued, as hereafter to be

## Of fynes.

be leuied accordynge to the sayde statute of Henry the. vii. by any person of the full age of. xxi. yeres, of any landes or other hereditamentes beynge, before the fyne leuied, in any wyse intailed vnto him or to any of his auncestors in possession, reuerfid, remaindre or in vtrewalbe immediatlye after the same fyne leuied, ingrossed & pclamations made, a sufficient barre and discharge for euer as wel agaynst him and his heires claymyng the same only by force of any such entayle, as agaynst al other to theyr vse, so that the same fines be not leuied by any womā after the death of her husband, contrary to the statute made the. xi. yere of Henry the seuenth of landes and tenementes of thurberisafice or purchase of her husbande or of anye hys auncestors gyue to her in dower, for terme of lyfe, or in tayle in vse or in possession. Excepted also al fynes leuied or to be leuied of any suche landes or hereditamentes as the owners therof by any special acte of parliament made lyth. p. said fourth yere of Henry the. vii. be restrained frō makynge any alienations discontinuances or other alterations of the same. Also of suche landes as be now in sute & variance in any of the kynges courtes, or wherof any evidences be now in  
des



## Of testaments. Fol. lxxviii.

demanded in the Chancery, or to which be already recovered. Excepted also fines levied or to be levied by any person, of landes or tenements granted to him or to his ancestors in fee either by the Kinges lettres patentes, or by vertue of any acte of parliament, whereof the reversion is in the kyng.

### Of testaments or last willes.



Testamentum in latin is as much to say as mentis testatio, that is a declaratio or witnessyng of a mans mynde. And ther be two sortes of testaments.

The one is called testamentum scriptum, that is, a written testament, or a last will by writing, & the other is called testamentum nuncupativum, which is when a man doth expresse by mouth his last will & testament without writing, by calling before him certain of his neighbours & whose presence he doth signifie by wordes his last minde and will. And this for most part men use to do when for feare of sudden death, they dare not abide & writing of theyr will. And this will (unless it be in certayne cases) is as stronge and as sure, as is a testament

## Of testaments.

his lastt wyll put in wytyng & sealed with the seale of the testatour.

Also though a testament by wytyng be not sealed with the seale of the testatour, yet is the testament good and effectuell in the lawe.

And ye shall also marke, that where a man maketh ones hys testament and wyll, & afterwarde maketh an other wyll by wordes: yf his lastt wyll be proued before the ordinary, and by hym put in wytyng and sealed with hys seale, such lastt wyll shall auoyde the fyrst wyll, oules it be in special cases, and so alwayes the latter wyll and testament shall auoyde the former.

Finally by an acte made the .xxi. yere of Raigne Henry the yght it was ordeyned that where part of the executours named in the testament wherin any landes or tenementes be wyllid to be solde by them: refuseth to take vpon them the administration, and the residue do take the charge and administration vpon them: in thys case al bargaynes and sales of the sayd landes made onely by those executours that toke the administration of the testament vpon them, shall be as good & effectuell, as yf al the residue of the executors so refusing had ioined, in the makinge



**The Difference betwene. fo. lxxix.**  
**kyng of the bargayne and sale.**

**The difference betwene executors  
and administratours.**

**E**xecutor is when a mā maketh  
his testament and last wyl and  
therin nameth the pson which  
shall execute his testament, the  
he that is so named is hys exe-  
cutor, and suche an executor shal haue an  
actio agaynst euery dettoure of his testateur.  
And yf the executors haue assetes p is to  
saye sufficient in theyr handes then shal eue-  
ry one to whō the testatour was in det haue  
an action agaynst the executor yf he haue  
an obligation or especialtie to shewe. But  
in euery case where the testateur might wa-  
ge hys lawe, there no action lyeth agaynst  
the executor.

Administratour is he, to whom the ordi-  
nary comitteth the administration and be-  
stowynge of the goodes of a deed mā for de-  
fault of an executor. And actions shal lye  
agaynst hym and so: hym as for an execu-  
tor, and he shalbe charged to the value of  
the goodes of the deed & no further, yf it be  
not by hys false plea, or so: that he harbe  
wasted

## executozs and administrators.

Wasted the goodes of the ded. But yf the administrator dye hys executours be not administrators, but it behoueth the ordinary to cōmitte a new administratiō. Howbeit if a stranger I meane hym that is neyther executour named in the testament and last wyl ner yet administrator apointed by the Ordinary, woll take the goodes of the ded and minstre of his owne hed and mynd without lawfull authoritie, this person shalbe charged and sued as an executour, & not as administrator in any actiō whych is brought against hym by any creditour. But if the Ordinary make a lettre adcolligendū bona defuncti, he þ hath such a lettre is not administrator, but the action lyeth in this case against the ordinarie, aswel as if he toke the goodes by his owne hand, or by the hand of any other his seruante by any other cōmāndement.

## An acte for probate of testaments made. ā. xxi. Hen. viii.

**N**othing shalbe takē by any haupnge auctoritie to take probatiō insinuatō or approbation of any testament wher the goodes of the testatour do  
not



## Of testaments, fo. lxxx.

not amounte above the value of .C.s. except to the scribe for writing thereof. vi. d. And for the commission of ministration of þ goodes of any dienge intestate not beyng likewyse above. .C.s. vi. d. Also none hauinge power to take probate of testaments shall refuse to approue testaments beyng lawfully offered vnto them in writtinge with wax thereto affixed ready to be sealed, so þ they be lawfully proued before the same ordinarie to be trow. And whē the goodes of the testatours do amount above. .C.s. & not excede. xl. li. none shall take for the probatio registering sealing and wrytinge of any suche testament above. iij. s. vi. d. wherof to be to thē that haue auctoritie to take the probacion. ii. s. vi. d. & the other. xii. d. to the scribe for registering.

And where the goodes amount above xl. li. than onely. v. s. to be taken, wherof to be to them that haue auctoritie to take the probacion. ii. s. and. vi. d. and thother. ii. s. vi. d. to the scribe for the registryng, or els yf he refuse that. ii. s. vi. d. thē he to haue for euery. x. lines euery lyne conteynyng in length x. pynches. i. d.

And they that haue auctoritie as is aboue sayde shall approue insinuate seale and register the testamētes and deliuer thē sealed wyth

## Of testaments.

wyth the seale of theyr offyce to the executors for the summes abovesayd and that wyth conuenient speede wythout any frustratorie delaye.

And yf any person dye intestate or there entours refuse to proue the testament: then they hauing auctoritie as is abovesaid, shal graunt the administration of the goodes to the wydowe of the persone deceased or to the next of kynne or to both after theyr discretiō, taking suretie of them for the trewe administration of the goodes and dettes whych they shall be so authorized to minister. And where one or dyuers clayme thadministration as next of kyn whych be egall in degre of kintred, or where any one pson declaryeth the administration as nexte of kyn where in dede dyuers persones be in equalitye of kintred: then in any such case the ordinarie shalbe at libertie to take one or mo making request. And where diuers require the administration, or where but one or mo of them and not al beyng in lyke degre, make request, thē the ordinarie shal admit the wydowe and him or them only making request or any of them, taking nothing for the same where the persone deceased dyed not worth **℥. l.** And if he dyed worth **℥. l.** & not aboue



## Of testaments. fo.lxxx.

xl.li.than.ii.s.vi.d. onely to be taken. And the executor or administratour callig to hym the debtors two at the least or such persons to whome any legacie was made & yf they refuse than.ii. next of kin to the persone deceased and in their defaute.ii. other honest persons shall by theyr discretions make a trewe inuentory indented of all the goodes, which persons swerynge before the bishop or his officers to be trewe, shall delyuer the one parte therof vnto them, and the other kepe with hym selfe. And none hauynge auctoritie to take probate of testaments vpon payne conteyned in this statute shall refuse to take any such inuentory presented or tendered to them.

Provided, yf any person shall dispose or will by his testament any landes or hereditamentes to be solde, that the mony or profits of the same be accepted for goodes or castels. And they hauinge the auctorite aboue said vpon the deliuey of the seale and signe of the testatour shall cause the same to be defaced and incontinent shal delyuer it to the executor wout any claime, & yf any require a copy of the testamēt & inuentory: the they hauing auctoritie or their ministers, shal wout delay, deliuer the a copy taking therfore

¶ l.

and

## Of testaments.

¶ for the regestring of the same as before, or els for euery ten lines. i. d.

¶ Provided, that where they hauing auctoritie as is abouesaid haue vsed to take lesse for the probate of testamētes or other thinges concernyng the same than is here specified: they shall take as they dyd before this acte.

¶ Now yf any that haue auctoritie to take probate of testamētes or theyr ministers do attempte agaynst this acte: they shall forfeite for euery tyme to the partie greued as moche mony as they shall take contrary to this acte. And ouer that. x. li. the one half to the king, the other to the partie greued, that wyl sue be action of dette byll information or otherwise in any of the kynges courtes, wherein no estoine protection nor wager of law shall be allowed. And euery of thē shall be charged for hym selfe and for none other.

¶ Provided, yf euery pson hauyng auctoritie abouesaid, may call before thē euery person named executour, to the intent to proue or refuse the testament and to bryng in inuentaries and to do euery other thyng concernyng the same, as they myght before thys acte, so that neyther they nor theyr ministers shall take aboue the fees limited by  
thys



## Of testaments. fo. lxxxi.

thys acte.

**E** How landes and tenementes may be by testament or other wyse disposed, enacted. a. xxii. Hen. viii.



Every person hauyng landes or other hereditamentes holden in socage, or of the nature of socage tenure, and not hauyng any landes or hereditamentes holden of the kynge by knyghtes seruyce, or by socage tenure in chiefe, or of the nature of socage tenure in chiefe, nor yet of any other person by knyghtes seruyce: maye gyue dispose and deuise aswel by testamente in wytyng, as otherwyse by any acte lawfully executed in hys lyfe, al his said landes or hereditamentes or any of them.

And euery person hauyng landes or other hereditamentes holden of the kynge in socage or of the nature of socage tenure in chiefe, and hauyng also anye other landes or hereditamentes holden of any other person in socage or of the nature of socage tenure, & not hauyng any hereditamentes holden of þe kynge or of any other by knyghtes seruyce: may from the said tyme gyue & deuise

## **Of testaments.**

wise aswel by testamēt in wrytyng, as other wyse by any acte lawfully executed in hys lyfe, al & euery of them at his pleasure. Sauynge to the kyng all hys ryght of primer seison & reliefes, & also all other ryghtes & duties for tenures in socage or of þ nature of socage tenure in chiefe, as hertofore hath bene accustomed, the same to be taken and sued out of the kynges hādes by the person to whom any such landes shalbe disposed or deuised in lyke maner as hath bene vſed by any heyre or heyres before the makynge of this statute. And sauynge and reseruyng also fines for alienations of suche landes and hereditamentes holdē of the kyng in socage or of the nature of socage tenure in chiefe wherof shalbe any alteration of freehold or inheritaunce made by wyl or otherwise as is aforesayd.

Item al persones haupnge lādes or other hereditamentes of estate of inheritaunce holden of the kyng in chief by knightes seruice or of the nature of knightes seruice in chief may giue wyl or assigne two parties of the same in thre partes to be deuided or elles as much therof as shal amount to the yerly value of two partes of the same in thre partes to be deuided in certayntie & by speciall diuisions



**Of testaments. Fol. lxxxviii.**

divisions as it may be knowen in severall, for the advancement of his wyfe, preferment of his childre, & paymēt of his dettes, or otherwise at his pleasure. Saving to þe kyng aswel þe wardship & primer lease of asmuch as shal amount to þe cleere yerely value of the thyrde parte thereof without diminutiō doubt feaunde couen charge or abridgemēt thereof: as also al tynes for alienatiōs of al such landes holden of hē by knightes service in chiefe wherof shalbe any alteratiō of feeholde or of inheritauce made by wyl or otherwyse.

And every person having landes or tenementes of estate of inheritance holden of the kyng in chiefe by knightes service, & other landes holden of hym or of any other by knightes service or otherwyse may gyve or assigne by his testament or otherwyse as is aforesaid two partes thereof in this partes to be divided or els as much thereof as shall extend to the yerele value of two partes to be divided in certapntie. Saving to the kyng aswel the wardship and primer lease of as much, as shal amount to the yerele value of the thyrde parte, without diminution. &c. As also al tynes for alienations as is above sayd.

Item every person holdyng landes or tenementes

## Of testamente.

tenementes only of any other then of the kyng  
by knyghtes seruyce and other landes and  
tenementes in socage or of the nature of so-  
cage tenure, maye gyue dyspose or assure by  
testament or otherwyle two partes therof  
holden by knyghtes seruyce or as muche as  
shal amount to the ful yearly value of two  
partes: And also all the landes & tenementes  
holden by socage or of the nature of socage  
tenure at hys pleasure. Sawing to the lorde  
of the landes and tenementes holden by  
knyghtes seruyce for hys wardship as much  
thereof as shal amount to the cleere yearly  
value of the thyrde parte without diminu-  
tion. &c.

And every persone holdinge onely of the  
kyng by knyghtes seruyce but not in chief,  
or holdyng of þ kyng by knyghtes seruyce &  
not in chiefe, and also other hereditamentes  
of others by knyghtes seruyce, & holdyng  
also other hereditamentes of any other per-  
sone in socage or of the nature of socage te-  
nure; may gyue and assure by his last wil or  
or otherwyle two partes of that is holdē of þ  
kyng by knyghtes seruyce & two partes of  
that is holden of any other person by knigh-  
tes se'ruice, or as much of eyther of them as  
shall amount to the full yearly value of two  
partes



## Of testaments. fol. lxxxviii

partes & also all hys landes and tenementes  
so holdē in socage or of the nature of socage  
tenure. : Sauynge as well to the kyng the  
wardshyp of as much as shal extende to the  
clere yearly value of the thyrde parte of the  
same so holden of hym by knyghtes seruice  
wythout diminution . &c. As also to the  
lordes of whom any of the said landes bene  
holden by knyghtes seruice for wardshyp  
as moche of the same, as shal amount to the  
clere yerly value of the thyrde parte in ma-  
ner aboue declared.

And yf that thyrde parte whych in anye  
of þ cases abouesayd shal come to the kyng  
do not amounte to the clere yearly value of  
the ful. iij. part of al the said hereditamentes  
wherof the kyng shalbe intitled to haue the  
custodye or pryncer season : than the kyng  
maye take into hys handes as moch of tho-  
ther two partes of the sayde hereditamentes  
as with that of the same hereditamentes re-  
mayning in his handes shal make vp þ clere  
yerly value of the thyrde part thereof so to be  
had to him in title of wardshyp & pryncer sea-  
son. And lyke benefyte to be gyue to euery  
lord of whom any such hereditamentes shal  
be holdē by knyghtes seruice conceyving on-  
ly hys thyrde parte for title of wardshyp.

L. iij. Also

## Of testaments.

Also al persons shal sue theyr liueries for possessions reuerfions or remainders, & also pay reliefes & heriettes lyke as they shoulde haue done before the makynge herof. And fines for alienations shalbe payd in the Chancery vpon writtes of entre in the post to be obtained there for comon recoveries to be suffered of any landes holden of the kynge in chiefe in lyke maner as is vsed vpon alienations of landes so holden in chiefe by fine or feoffement.

Provided that in such cases where fines for alienations shalbe payd in the Chancery for writtes of entre in the post as is afore- sayd, none other fyne shalbe payd there for any suche writtes.

Item where two or more persons holde of þe king by knyghtes seruice ioyntly to the & to the heires of one of the, & he that hath þe inheritance therof dieth, his heyre beyng within age: þe king shal haue the ward & marriage of þe body of such heyre the lyfe of the freholder or freholders of the lades so holden by knyghtes seruice notwithstandinge.

Sauynge to all women suche ryght and tittle of dower as they owe to haue of any landes or tenementes to be assignes vnto them out of þe two partes of the sayd lades

or



**Of maryages. fol. lxxv.**

or tenementes severed from the thyrde parte as is aboue sayd and not otherwyle. And sauyng also to the kyng the reuerfions of all suche tenauntes in ioyntenure & dower immediatly after the death of such tenauntes, yf they shal happen to dye, durynge the noue age of the kynges wardes.

**Of mariages, inacted anno  
xxxij. Henrici. vij.**

**I**t is enacted, that from the fyrste daye of July, in the yeaere of oure Lorde a thousande fyue hundred and fortye all mariages within thys church of England contracted betwene lawfull persons, as by thys acte we declare all persones to be lawfull that be not prohibited by gods lawe to mary, such mariages beyng contracte and solemnised in the face of the churche and consummate wyth bodely knowlege or frute of chyldren or chyldre beyng had therein betwene the parties so maryed, shalbe demed and taken to be lawfull good and indissoluble, notwithstanding any precontracte of matrimouye not consummate wyth bodely knowlege which eyther of the psones so maryed or both shal haue

## Of maryages.

haue made w<sup>th</sup> any other before the tyme  
of contractyng that mariage whych is so=  
lemnised and consummate, o<sup>r</sup> wherof suche  
frute is ensued o<sup>r</sup> maye ensue as afore : and  
notw<sup>th</sup>standyng any dyspensation, pre=  
scription, lawe o<sup>r</sup> other thyng graunted o<sup>r</sup>  
confy<sup>r</sup>med by acte o<sup>r</sup> other wyse. And that  
no reseruation o<sup>r</sup> prohibition, goddes lawe  
excepte, shall trouble o<sup>r</sup> impeche any mari=  
age w<sup>th</sup>out leuiticall degrees. And that  
no persone shall after the sayd fyrst daye  
of Julye aforesayd, be admytted in a=  
ny of the spiritual courtes w<sup>th</sup>  
in this the kynges realme,  
o<sup>r</sup> any bys other lan=  
des and domini=  
ons, to any  
processe  
plee o<sup>r</sup> alle=  
gation contrary  
to this acte.

**F E R R S.**



## The table.

### A Table of thys present booke.

What is lawe. fol. iij.

A division of estates. fol. c. odem.

Tenaunt for terme of yeares. fol. iij.

Tenaunt at wyll. fol. iij.

Tenaunt by coppye of court rolle. fol. v.

A division of free holdes. fol. vii.

Tenaunt for terme of lyfe. fol. viij.

Tenaunt by the curtesye. fol. ix.

Of tenaunt in dower. fol. x.

A division of inheritaunce. fol. xij.

Of fee simple. fol. xij.

Of fee taylor. fol. xvij.

## The table.

<b>T</b> enaunt after possibilitie of issue ex- tincte.	fol. cix.
<b>O</b> f ioyntenauntes.	fol. cxij.
<b>T</b> enauntes in common.	fo. cxvij.
<b>T</b> enauntes in common of chatels.	fo. cxxij.
<b>O</b> f partition to be made by ioyntenaun- tes and tenauntes in common.	fo. cxxvij.
<b>O</b> f conditions.	fo. cxxv.
<b>A</b> n acte howe straungers shal take auen- tage of conditions made.	fo. cxxvij.
<b>A</b> purer of season, and attournement.	fo. cxxvij.
<b>O</b> f seruices.	fo. xl.
<b>K</b> nyghtes seruice.	fo. xli.
<b>O</b> f warde mariage and reliefe.	fo. xliij.
<b>S</b> eruice of castel garder.	fo. xlv.
<b>O</b> f grande sergeauntie.	fo. xlv.

Deu



## The table.

**¶ Petite setgeantie.** fo. clvi.

**¶ Homage auncestrell.** fo. clvi.

**¶ Of Apueries.** fo. clx.

**¶ How heyres ought to sue they? lpueries**  
fo. clx.

**¶ Of Socage.** fo. lli.

**¶ Franke almoyne.** fo. llii.

**¶ Of burgage.** fo. lv.

**¶ Of villenage or bonde seruite.** fo. lv.

**¶ Of auncien demene.** fo. lvi.

**¶ Of rentes.** fo. lix.

**¶ What remedy a man hath to recouer his  
rent when it is behynde.** fo. lxxii.

**¶ How Auowries ought to be made of re-  
tes and seruices.** fo. lxxv.

**¶ An acte for the assuraunce of fermours.**  
fo. lxxvi.

**Of**

## The table.

Of falscypeng of recoveries by fermers. fol. lxxviii.

Of tythes & howe they shalbe recoucted fol. lxxviii.

Of mortuaries. fo. lxx.

Of dyscontinuaunce. fol. lxxi.

Howe recoveries by collusion agaynst tenants for terme of lyfe is no dyscontinuaunce. fol. lxxii.

Howe wrongfull disseisin is no discente in the lawe. fol. lxxiii.

The limitatiō of prescription. fol. lxxiii.

Of fines. fol. lxxvi.

Of testamētes or last wylls. fol. lxxviii.

The dyfference betwene executors and administratours. fol. lxxix.

An acte for probate of testaments. fol. lxxix.

Howe landes and tenementes may be by testament or otherwyle disposed. fol. lxxxii.

Of mariages. fol. lxxxv.



Printed at London by W:  
charde Bankes.

Cum privilegio ad imprimen-  
dum solum.

Handwritten text in a cursive script, likely a list or index, possibly containing names or titles. The text is written in a dark ink and is somewhat faded and slanted.

Handwritten text in a cursive script, likely a signature or a date. The text is written in a dark ink and is somewhat faded and slanted.